

TOWN OF DARIEN, CONNECTICUT AFFORDABLE HOUSING PLAN



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Draft date:
January 29, 2009

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AFFORDABLE HOUSING PLAN**

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CHAPTER 1 AFFORDABLE HOUSING PLAN OVERVIEW

HISTORY/BACKGROUND

Darien, Connecticut, a New England bedroom community incorporated in 1820, is comprised of approximately 20,000 residents in southwestern Fairfield County. Bounded by two of the State's largest cities, Stamford to the west, and Norwalk to the east, and New Canaan north and Long Island Sound south, Darien serves commuters to New York City and beyond with its two train stations in Noroton Heights and Downtown Darien, as well as its easy access to I-95 and the Merritt Parkway.

Darien, while a small town, it has a rather large sense of community made up of historical New England neighborhoods. Its history, architecture and coastlines are considered integral to the town's character, and where carefully-planned residential as well as non-residential development enhances the community's economic stability.

The State of Connecticut's stated policy is that each municipality should have at least ten percent (10%) of its housing stock qualify as "affordable housing". To achieve that goal, the Town of Darien would have to add 700+ more affordable housing units, per the anticipated 2010 Census figures, to reach that goal. However, the creation of 700+ additional affordable housing units may not be practical due to such factors as the already highly developed nature of Darien, the lack of buildable space, the cost of land in Darien and the burden that so many new housing units would place on the town's existing infrastructure (such as the local road and drainage systems). Yet, Darien recognizes the building of any affordable units provides valuable housing resources for the town.

Based on Connecticut's need to have more affordable housing in the State, the Connecticut General Assembly enacted affordable housing legislation, CGS Section 8-30g ("8-30g"), to encourage both public and private development of affordable housing.

Historically, the Town of Darien has consistently and carefully built the following affordable housing units:

1940s/1950s Allen O'Neill Housing: State moderate rental housing development, forty-one (41) single-family homes and one 12-unit apartment building;

1985: Old Town Hall Homes: Elderly rental housing owned and operated by the Darien Housing Authority – thirty (30) units of senior housing;

1987: Villager Pond Condominiums: deed restricted housing – two (2) units;

1995: Clock Hill Homes: Thirty (30) moderate-income condominium owner-occupied units were built by a private developer and have interfaced with the neighbors and town nicely. They serve as an example of aesthetics and management techniques for other such affordable housing developments; and

Early 2000s: AvalonBay Communities: Forty-seven (47) affordable units within a 189 unit complex

In total, the Town has provided one-hundred, sixty-two (162) affordable housing units.

In order to both bring back control to the Town's local zoning for all developments, this plan is designed to 1) provide affordable housing in Darien where it is best suited and to 2) establish paths toward complying with State law.

EXECUTIVE SUMMARY

Mindful of the housing needs in Darien, the Board of Selectmen commissioned this Affordable Housing Plan which highlights the following:

- Provide affordable housing in Darien;
- Evaluate the risks if Darien does not have a plan;
- Understand the policies behind affordable housing as reflected in the Connecticut General Statutes and the avenues available under the law by which municipalities may take control of the development of affordable housing within their borders;
- Review existing laws and court cases;
- Identify and develop strategies for the Town to ensure that the diverse housing needs of residents are met;
- Reflect the 2006 Town Plan of Conservation and Development and other State and Regional plans regarding housing; and
- Identify potential construction options to reach moratoria permitted by 8-30g.

In 1989, the State of Connecticut legislature adopted Section 8-30g of the Connecticut General Statutes with the goal of each municipality to provide 10% of the housing stock as affordable. Although land is costly and scarce in Fairfield County and in Darien in particular, the Town of Darien, within this Plan, seeks to make a good faith effort to work toward meeting that goal.

This Affordable Housing Plan serves as a working document that will evolve with the changing needs and priorities of the Town. It may also need to be modified to reflect any future legislative amendments. The Town should work with its State legislators to facilitate any modifications to the 8-30g Statute.

The Town of Darien will encourage the development of new affordable housing in a variety of ways. Through a 20-point strategy, the Plan will include planning and zoning regulations and strategies such as the recent adoption of inclusionary zoning, provide workforce housing through various local and State incentives such as HOMEConnecticut; implement housing production and preservation strategies; target local capacity strategies that will provide ongoing education campaigns, pursue applicable grants, and work with neighboring towns and cities.

MISSION STATEMENT

The Darien Affordable Housing Plan is intended to develop a course of action that calls for a logical, methodical strategy to create affordable housing units in Darien. The Plan's goal is twofold: 1) to develop affordable housing and 2) to provide Darien with planning control over the placement of multi-unit developments in Darien's largely single family residential community.

POLICY STATEMENT

In 2008, the Darien Board of Selectmen voted to approve the following Affordable Housing policy statement:

The Darien Board of Selectmen is committed to increasing the availability of diverse affordable housing in the Town of Darien, including that which qualifies as affordable housing under C.G.S. §8-30g. The Board recognizes the need that exists to increase affordable housing not only in the Town of Darien, but also in the region for our senior and workforce populations and housing that will attract the young adult population.

The Board of Selectmen recognizes that Darien has a number of opportunities to provide more affordable housing to seniors, working families and young adults.

The Board of Selectmen is committed to taking a proactive approach to control growth and to ensure that the character of the Town will be maintained. The Town of Darien is a premier municipality in the State of Connecticut and the Board is entrusted to maintain that status. Significant progress in increasing the availability of affordable housing will ensure Darien's health and viability and also the health and economic viability of our southwestern region.

To implement the Board of Selectmen policy statement for affordable housing in Darien, the objective of this plan is five-fold:

1. To maintain local control of high density development;
2. To maintain the affordable rental and owner units currently in Town;
3. To add to the affordable housing stock so as to keep the senior population in Darien;
4. To attract the young adult professional and workforce population working in Darien; and
5. To address transportation, job and energy issues in the 21st Century.

WHY IS AFFORDABLE HOUSING AN ISSUE FOR DARIEN AND WHY BUILD IT?

WHAT IS AFFORDABLE HOUSING?

For the purposes of this Plan, Affordable Housing is defined as that housing which can be afforded by households earning 80 percent (80%) of the Area Median Income (AMI) as per U.S. Housing and Urban Development (HUD).

The State of Connecticut, in addition to defining affordable housing in the same manner as HUD, has created additional affordable housing guidelines for all 169 municipalities: ten percent (10%) affordability of housing units and two percent (2%) of housing that is affordable to those households at 80% or less of the State Median Income or Area Median Income, whichever is less – the latter reaches a four year moratorium from 8-30g development applications.

As mentioned previously, this Plan seeks to 1) create both affordable housing and 2) to reach moratoria. As mentioned above, housing that is “affordable” (or 80% of the AMI) allows the Town to build towards the State of Connecticut’s goal of having each municipality have 10% of their housing units be affordable.

In an attempt to meet concerns about availability and cost of housing in the State, the legislature passed Public Act 89-311, entitled “An Act Establishing a State Affordable Housing Land Use Appeals Procedure” effective July 1, 1990, now contained in Chapter 126a, Section 8-30g of the General Statutes. Each municipality is encouraged to have at least ten percent (10%) of its housing as affordable. Towns that do not meet the ten percent (10%) threshold are subject to certain provisions of 8-30g which permit private developers to propose multi-unit developments containing at least thirty percent (30%) of affordable units. Such proposals may only be denied by local planning and zoning commissions for reasons based on “substantial public interests in health, safety or other matters which the commission may legally consider.” If a denial is challenged in the courts, 8-30g expressly shifts the burden to the local planning and zoning commission to demonstrate that its denial of the application was based on substantial evidence in the record before it and based solely on the criteria quoted above. (See page 9 for a discussion of the leading case law concerning 8-30g).

Per the 2000 Census, Darien has 6,792 units of housing. Ten percent of that would be 679 units. Darien now has only 2.4% (163) affordable units and therefore leaves the Town vulnerable to 8-30g applications by private developers.

In recent years, 8-30g has been amended to allow municipalities a four year moratorium from Section 8-30g applications. Each time a municipality increases its affordable housing stock by two percent (2%), based on the last available United States Census numbers, the town may apply for and receive a four year moratorium from development applications seeking to use 8-30g. In order to qualify towards the two percent (2%) moratorium goal, units must generally be deed restricted as affordable using State Median Income thresholds (discussed below), be newly constructed, and have Certificates of Occupancy issued by the local municipality. (See moratoria points chart Exhibit 3 supra).

WHAT IS AREA MEDIAN INCOME (AMI), WHAT DOES IT MEAN IN TERMS OF AFFORDABLE HOUSING IN DARIEN AND WHAT IS THE DIFFERENCE BETWEEN AMI AND SMI?

AREA MEDIAN INCOME

Area Median Income (AMI) is the amount which divides the income distribution of area families into two equal groups: half of the families having incomes above the median and half of the families having incomes below the median.

EXHIBIT 1 FAMILY INCOME LEVELS RELATIVE TO AREA MEDIAN INCOME (AMI)

Area Median Income in Darien is: \$117,800		Family of <u>1</u>	Family of <u>2</u>	Family of <u>3</u>	Family of <u>4</u>
Low Income Housing	below 80% of Area Median Income (AMI)	\$53,600	\$61,250	\$68,900	\$76,550
Very Low Income Housing	below 50% of Area Median Income (AMI)	\$41,250	\$47,100	\$53,000	\$58,900
Extremely Low Income Housing	below 30% of Area Median Income (AMI)	\$24,750	\$28,300	\$31,800	\$35,350

Source: US Dept. of Housing and Urban Development.

According to the US Department of Housing and Urban Development (HUD), the “Area” is defined as the Stamford-Norwalk HMFA which includes the following towns: Darien, Greenwich, New Canaan, Norwalk, Stamford, Weston, Westport, and Wilton. The Area Median Income in this region as of December 2008 is \$117,800.

STATE MEDIAN INCOME

State Median Income (SMI) is the amount which divides the income distribution of State families into two equal groups: half of the families having incomes above the median and half of the families having incomes below the median. The State Median Income as of December 2008 is \$82,100.

EXHIBIT 2 FAMILY INCOME LEVELS RELATIVE TO STATE MEDIAN INCOME

State Median Income (SMI) is: \$82,100		Family of <u>1</u>	Family of <u>2</u>	Family of <u>3</u>	Family of <u>4</u>
Low Income Housing	below 80% of State Median Income (SMI)	43,050	49,200	55,350	61,500
Very Low Income Housing	below 50% of State Median Income (SMI)	28,750	32,850	36,950	41,050
Extremely Low Income Housing	below 30% of State Median Income (SMI)	17,250	19,700	22,150	24,650

Source: US Dept. of Housing and Urban Development

WHAT DOES IT MEAN/DIFFERENCE BETWEEN AMI AND SMI

When affordable housing is provided to households that earn 80% or less of the Area Median Income (AMI), it results in increased “affordable” housing that counts toward the State of Connecticut’s 10% goal, whereas when the State Median Income (SMI) is used, it not only provides “affordable” housing units that count toward the 10% goal, but also counts toward the municipality’s 2% requirement for a moratorium.

EXHIBIT 3 HOUSING-UNIT EQUIVALENT POINTS UNDER CGS 8-30g AS APPLIED TO A MORATORIUM

Type of Unit	Point Value Per Unit
Market-rate units in a set-aside development	0.25
Elderly Units, owned or rented Restricted to households at or below 80% of SMI	0.50
Family units, owned, that are Restricted to households with Annual income of no more than:	
80% of SMI	1.00
60% of SMI	1.50
40% of SMI	2.00
Family units, rented, that are Restricted to households with Annual income of no more than:	
80% of SMI	1.50
60% of SMI	2.00
40% of SMI	2.50

Source: CGS Section 8-30g

Under the calculations outlined within Section 8-30g, Darien requires 136 housing-equivalent points to reach a two percent (2%) increase in its affordable housing stock based on the 2000 U.S. Census. Unofficially, Darien now has 112 points, and to qualify for a moratorium, an additional 23.84 (24) points would be needed.

“Fairfield County is one of the most expensive areas [as listed in CNN Money] to live in the United States. It is no wonder that affordable housing is a challenge that requires the best efforts of the public and private communities to address. With the average sales prices of a house last year [2006] at \$1,870,000 in Darien, an increase of 185% in a single house in the last 10 years, it is no wonder that affordability is a huge question. Even rental prices are the highest in the nation. Workers must earn \$90,000 [or more] per year to afford a two-bedroom apartment.

Based on a survey of over 2,500 participants, the following four groups of people have been identified as being in need of affordable housing in Darien:

1. Workers employed in Darien who cannot afford to live in town, especially teachers, police officers, Town Hall and library employees and retail workers
2. Seniors living on fixed or limited incomes
3. Single-parent families
4. Young households, many of whom grew up in the community.”¹

CONNECTICUT LAWS GOVERNING AFFORDABLE HOUSING RELATIVE TO LOCAL ZONING

This portion of the Affordable Housing Plan reviews how the courts have decided cases under Section 8-30g. That Statute defines affordable housing, provides a procedure for applications which are affordable housing developments, and establishes a special appeals procedure to the Superior Court when affordable housing applications are denied.

The courts have concluded that the main purpose of Section 8-30g is to encourage and assist the need for development of affordable housing throughout the State. As a result, Section 8-30g is to be liberally construed as a remedial statute. Section 8-30g prevails in the event of a conflict with other zoning laws such as Section 8-2 and Section 8-26. Inland wetlands agencies were intentionally omitted from Section 8-30g, as the Statute would not apply to decisions of those agencies, only to those of planning and zoning commissions.

Where a project is disapproved, or approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant has several options: (1) a conventional land use appeal, (2) an affordable housing appeal, or (3) a resubmission to the commission of an amended application responding to some or all of the objections or restrictions stated by the municipal agency.

In an affordable housing appeal the burden of proof is shifted to the agency to show, based upon the evidence in the record before the agency that: (1) the decision from which the appeal is taken and the reasons given for the decision were supported by sufficient evidence in the record; (2) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (3) such public interests clearly outweigh the need for affordable housing; and (4) such public interests cannot be protected by reasonable changes to the affordable housing development. If the agency does not satisfy its burden of proof on these four factors, the Superior Court is required to wholly or partly revise, modify, remand or reverse the agency's decision in the manner consistent with the evidence in the record before the court.

The Town and not the applicant must marshal the evidence to persuade the trial court that there is sufficient evidence in the record to support denial of the application, and the reasons for that decision.

Source: Connecticut Practice Series: Connecticut Land Use Law and Practice, Chapter 51, Fuller, 2007.

¹ Darien Affordable Housing Advisory Committee 2007 Report

STATUS OF 8-30G AND COURT CASES

As of 2007, there were 144 judicial decisions involving 97 separate developments. Developers prevailed in 70% of the cases and municipalities prevailed in 30% of the cases. From 1992 – 2006, there were 138 judicial decisions with an average of 9.2 per year.

Source: Connecticut Land Use Law for Municipal Land Use Agencies, Boards, and Commissions (2007)

8-30g Cases Per Category

A review of some of the court decisions under Section 8-30g will hopefully provide some insight into when a commission's decision may be upheld or overturned by the courts. The courts have upheld the denial of 8-30g applications that were based on specific health, safety and environmental issues that were established by sufficient evidence in the record. The courts have overturned the denial of 8-30g applications when a commission has based its decision on either an inadequate issue or an insufficient factual record. Many of these cases involve a mixed question of law and fact.

Public Safety

Ensign-Bickford Realty Corporation v. Simsbury Zoning Commission

Potential safety problems can be grounds for denial, such as where the commission did not have adequate information to decide that residential uses on or near the site would be adequately protected from previous industrial uses involving explosives on the land of the applicant.

Lack of Local Inland Wetlands Permit/Stormwater Runoff

Landworks Development LLC v. Farmington Planning and Zoning Commission

The denial of an application to amend the zoning regulations, change the zone of 67.5 acres of land, and a site plan for a 384 rental unit affordable housing development was upheld where the commission met its burden of proof that the applicant had to obtain an approval from the inland wetlands agency where there was sufficient evidence of a wetlands impact due to storm water runoff and drainage on the site, and the applicant had not filed an application for a regulated activities permit before filing the site plan application with the planning and zoning commission under CGS 8-3(g), which was required by that statute even though the zoning application was for affordable housing under 8-30g.

AvalonBay Communities v. Wilton Planning and Zoning Commission

The denial of a regulated activities permit by the local inland wetlands agency is a valid reason to deny the affordable housing proposal.

Emergency Access

AvalonBay Communities Inc. v. Stratford Zoning Commission

The court found there was sufficient evidence to support the commission's concern over fire safety which outweighed the need for affordable housing. Upon remand the application was reduced from 160 units to 146 units and changes were made to the original plan to make the site more accessible to fire fighting equipment and address traffic concerns of the commission.

Nonconformity with Zoning

Wisniowski v. Planning Commission of Berlin

Nonconformity with zoning regulations is not in and of itself a valid reason to deny an affordable housing application, but the agency can do so if it proves that the zoning regulations are necessary to protect substantial public interests in health, safety and other matters.

Noise Level

Phoenix Housing of Shelton, LLC v. Planning and Zoning Commission of City of Shelton

The denial of an affordable housing application for four residential units on a parcel containing 48,000 square feet in a zone with a 40,000 minimum lot size was overturned on appeal. The court rejected the finding that the noise level in the area would increase substantially from four additional residences. The court also did not accept the commission's other reasons for denial which were that: the applicant failed to identify the agent to be responsible for managing the housing project in conformity with 8-30g, adverse impact on the adjacent residential neighborhood; unavailability of public transportation which is not a necessary component of an affordable housing application; problems with utility services in the area; and the fact that only one affordable housing unit was obtained from the property.

Downzoning

Greene v. Ridgefield Planning and Zoning (1993)

The court did not uphold the Commission's determination that downzoning was inappropriate because there was an inadequate factual basis for such a finding and because it was inconsistent with amendments to CGS 8-2 requiring the plan of development to address low and moderate income housing. The court determined that there was no evidence in the record that a zone change would adversely affect property values in the area, and imposing additional burdens on the school system was not a proper reason for denying a zone change.

Impact on School System

Wisniowski v. Planning Commission of Town of Berlin

The fiscal impact on the municipal school system is not an adequate reason to reject an affordable housing application.

Source: Connecticut Practice Series: Connecticut Land Use Law and Practice, Fuller Chapter 51, 2007

Quantifiable Probability That Specific Harm Will Result

AvalonBay Communities v. Wilton Planning and Zoning Commission

Court determined that there must be evidence in the record of a quantifiable probability that specific harm will result if the application is granted, and mere concerns alone is insufficient.

Quarry Knoll II Corp v. Planning and Zoning Commission of Town of Greenwich

When determining whether the record contains sufficient evidence to support the reasons stated for the commission's decision the commission must show more than a theoretical harm to the public interest, but not necessarily that a specific harm to the public interest was likely if the application was granted.

Inadequate Factual Record

Mackowski v. Planning Commission of Town of Stratford

The court found that the zoning commission improperly denied an application when it only made general statements about adverse impact on public health and safety as to traffic and sewer capacity, and the specific evidence before the commission established that there would be no significant

problems with traffic or the sewer system from the project. The expression of concerns on these subjects was inadequate absent the possibility of substantial harm.

Smith-Groh, Inc. v. Planning and Zoning Commission Town of Greenwich

The court found that the zoning commission did not meet its burden of proof in denying an application for a 36 unit affordable housing building in a multi-family residential zone where 27 conventional units were allowed with a special permit. The court found that the commission's reasons for denying the application such as claimed on site and off site traffic problems were not supported by substantial evidence in the record.

These sample cases show that not only is the burden of proof on the commission, but reasons for denial must be clearly defined and valid. It is not adequate to deny an 8-30g application simply for reasons like aesthetics, possible increase in traffic or impacts on schools.

The courts have upheld the denial of an 8-30g application based on public health, safety and environmental issues when the record contained sufficient evidence to support such a denial.

MORATORIA UNDER SECTION 8-30g

A moratorium is a four year period during which certain applications for affordable housing development, as provided in Section 8-30g of the Connecticut General Statutes are not subject to the procedure for appeals to the Superior Court. The First Selectman may request a moratorium from the Connecticut Department of Economic and Community Development (DECD) when the housing equivalency points equal 2%. The units must have been built after 1990, and must not be included in a previous or existing moratorium.

Based on the fact that the number of housing units in Darien in the 2000 US Census was 6,792, Darien needs 135.84 housing unit-equivalent points to apply for a moratorium. This calculates to be 2% housing equivalent points. As noted in the DAHAC report, 112 housing equivalency points have already been constructed in Clock Hill Homes and AvalonBay Communities. Thus, 23.84 additional points are now needed to qualify for a moratorium. As described in the State Statutes (see Appendix C), Housing unit-equivalent points are based upon the type of housing unit. Exhibit 3 shows how many points are gained for each type of unit constructed.

The general premise of the point system is that the lower the income levels of the occupants (i.e., the lower the income restriction) the more points the unit will count. Family units (units with no restriction on the age of the occupants) also receive extra points. For example, if one were to build 20 rental units at the above 80% SMI, each unit gives the Town 1.5 points toward the moratorium. Thus, those 20 rentals would provide 30 points. If the rental units use the 60% of SMI (changing the above figures) each unit would be worth 2 points. At 40% of SMI, each rental unit equals 2.5 points. Thus, one could build fewer units, but get more housing unit-equivalent points to count towards the moratorium.

According to DECD, thirty-one municipalities currently have achieved 10% affordability, and only one municipality in Connecticut has received a moratorium under Section 8-30g – Trumbull. Fifty-one municipalities are similar to Darien in that they have less than 2% of their housing stock categorized as "affordable housing".

The 2007 DAHAC report outlines how the Town of Darien could achieve a four-year moratorium. It is noted that there may be many options available to the Town to achieve such. It is also possible that a second moratorium could be achieved if significant progress is made in constructing affordable housing.

One important note is that the calculation of the number of required points is based upon the number of dwelling units in the Town in effect as of the last US Census. Currently, the 2000 Census is used for this purpose. It is expected that the 2010 Census will come out sometime in 2012. At that time, the number of required points for a moratorium will change, as the number of dwelling units in Darien will have increased over the 2000 Census.

As noted herein, there are 23.84 housing unit-equivalent points now required to qualify for a moratorium. However, to qualify, the units will need to have Certificates of Occupancy issued and all appropriate deed restrictions filed in the Darien Land Records. The Town would then submit all information to the State Office of Policy and Management for their determination on whether Darien would qualify for a moratorium. The units would have to be fully constructed prior to the 2010 Census results.

HOMEConnecticut Incentive Housing Zones (IHZ)/Technical Grants

A new land use tool has recently been enacted to encourage additional affordable housing units in the State of Connecticut. The new “HOMEConnecticut Statute”-- Section 8-13 of the Connecticut General Statutes, the Connecticut Housing Program for Economic Growth – provides financial incentives to communities that create overlay zones (Incentive Housing Zones) which allow for mixed-income housing at higher densities.

What The Legislation Includes:

Zone Creation: Incentive Housing Zones (IHZ) are enacted by a municipality’s zoning commission, and then approved by the State Office of Policy and Management (OPM). The municipality’s zoning commission must establish the IHZ as an overlay zone. Overlay zones rest on top of existing zones and usually impose additional requirements or restrictions intended to protect the area's unique characteristics. The municipality may establish multiple IHZs, but each zone may cover no more than 10% of the town's total land area, and all the zones and subzones together can cover no more than 25% of that area.

Densities: Housing created within the zone must meet threshold densities:

- Six units per acre for single-family detached houses,
- 10 units per acre for duplex or townhouses, and
- 20 units per acre for multifamily housing.

Municipalities can require even higher density if they wish. These densities must represent a 25% increase in the allowed density within the zone. Even if an area is already zoned to allow the densities called for in this program, the municipality can still enact a zone if density is increased 25%. These densities are only for land that can be feasibly developed into residential and mixed use property (i.e., developable land).

Municipalities can also ask the Secretary of OPM to waive the density requirements, and he may do so if (1) the municipality, one of its agencies, a land or housing trust, or a nonprofit housing organization owns or controls the land in the proposed IHZ; (2) the proposed regulations require all

of the units to be affordable and provide a mechanism to enforce that requirement, and (3) the proposed IHZ satisfies the bill's other requirements

Affordability: At least 20% of the units in each development within the zone must be affordable to people earning no more than 80% of the area's median household income, using no more than 30% of their annual income. These affordable units must remain that way for at least 30 years, by imposing deeds, covenants, or other restrictions. The housing developer may impose more stringent affordability requirements. The Incentive Housing Zone regulations must designate these developments as permitted uses and allow them as a matter of right. As such, the zoning commission may deny them only if they do not meet the requirements specified in the regulations.

Design: The IHZ's regulations may include design standards to insure that a proposed new development complements existing buildings and structures and the zone's housing plan. These design standards must be submitted to the OPM secretary for approval. The standards cannot increase development costs to the point where low- and moderate-income people cannot afford the units reserved for them. The secretary may disapprove a proposed IHZ if the standards could have this effect. This is the only reason why he may disapprove the standards.

State Payments to Municipalities: The legislation allocates \$4 million in Fiscal 2008 to this program for payments to municipalities, technical assistance and OPM's administration of the program. For a municipality to receive state incentive payments, it must create an overlay zone meeting the requirements of this act, submit application to OPM, and have it approved as an Incentive Housing Zone. If these requirements are met, the municipality is eligible for the following payments:

- **Planning Grants for Towns:** Within available funding, the bill authorizes OPM to make grants to towns for planning IHZs, drafting implementing regulations and design standards, and reviewing and revising applicable subdivision regulations. Towns can also use the grants to prepare the information they must submit to the secretary when applying for eligibility.
- **Zone Adoption Grants:** Within available funding, OPM shall pay municipalities \$2,000 for each unit that can be built on developable land in the zone based on the bill's minimum as-of-right densities. A build-out analysis to determine the number of possible units is part of the municipality's application for approval of the IHZ.
- **Building Permit Grants:** Within available funding, OPM shall make payments to municipalities for each building permit they issue for housing within the IHZ. Municipalities shall receive \$2,000 for each multifamily, duplex or townhouse unit, and \$5,000 for each single-family detached unit. Units developed specifically for older persons under federal or state law do not qualify for grants.²

HOMEConnecticut also provides towns with grants for the purpose of providing technical assistance in the planning of the incentive housing zones, the adoption of incentive housing zone regulations and design standards, the review and revision as needed of applicable subdivision regulations and applications to the Secretary for preliminary or final approval as described by the Statute.

² HOMEConnecticut

In July 2008, the Town of Darien submitted a grant application to the State of Connecticut's Department of Office of Policy and Management and received \$45,900 to: 1) complete inclusionary zoning regulations; 2) prepare a feasibility study of the former Darien Library property which will be converted to affordable housing; 3) work to establish a local affordable trust fund; 4) establish, develop and apply an incentive zone to 35 Leroy Avenue; and 5) establish design guidelines for the site.

RECENT PAST

(1990-2008)

In the past 18 years, Darien has produced seventy-seven (77) units of affordable housing, through private and public housing developers.

Clock Hill – Gideon Lane

Thirty moderate-income condominium owner-occupied units were built by a private developer and have interfaced with the neighbors and town nicely. They serve as an example of aesthetics and management techniques for other such affordable housing developments in Darien.

AvalonBay Communities, Hollow Tree Ridge Road

A total of 47 units of affordable housing were built on 31.5 +/- acres at AvalonBay on Hollow Tree Ridge Road. At this location, a number of market rate units were also built and the Town will seek approval from the State of Connecticut Department of Economic and Community Development (CT DECD) to allow those units to count towards the 8-30g moratorium.

Former Town Library – 35 Leroy Avenue

The Town purchased the former Darien Library property at 35 Leroy Avenue and is seeking developers to construct 15-20 units of affordable housing. It is currently in a developer review panel process. The responses to the 35 Leroy Request for Proposals remain under review at the time this Plan is being written. The final yield from the development will be a result of a number of factors, including, but not limited to, approval by the Planning and Zoning Commission. As a result, it must be noted that the number of units shown in this Plan and the income levels are for illustrative purposes only, and do not reflect a specific plan or planned course of action.

EXHIBIT 5 AFFORDABLE HOUSING CONSTRUCTED IN THE RECENT PAST

<u>Recent Past</u>	Total	NET	P&Z	P&Z
	Number	Affordable	Application	Approval
	<u>Units</u>	<u>Units</u>	<u>Submitted</u>	<u>Granted</u>
Clock Hill Homes	30	30	1993	1994
AvalonBay Communities, Hollow Tree Ridge Road	189	47	6/17/1998	12/8/1998

How to achieve a first moratorium

As noted, there are many ways to get to a first moratorium. This is but one example. The exhibit below shows how a first moratorium could be achieved in Darien. This exhibit assumes that 19 units of owner-occupied housing will be constructed on the former Darien Library property at 35 Leroy Avenue- a density of about 10 units per acre. This density is consistent with the density approved for Clock Hill Homes in the 1980s. This example assumes that those units at the former Darien Library property will be owner-occupied, and be restricted to the 80% level. Since a decision has not yet been made regarding this matter, the exact number of points is unclear.

This moratorium sample does not assume the construction of any 8-30g developments, as those are totally outside the control of the Town of Darien and the Darien Housing Authority. It is also important to note that only a portion of Allen O'Neill is included. Again, all units must receive Certificates of Occupancy by the time the 2010 Census comes out. This is a very tight timeframe.

EXHIBIT 6 POTENTIAL FOR ACHIEVING FIRST MORATORIUM

	Number of Affordable Units	Points Per Unit	Total Housing Equivalency Points
The Cottage, 30A Edgerton Street*	1	1	1.0
Former Darien Library property, 35 Leroy Avenue**	15-20	1	15-20
Allen O'Neill redevelopment*** (the 54 th -56 th units which get a Certificate of Occupancy)	3	1.5	4.5
Assuming these are rental units at 80% of AMI			
TOTAL:	19 - 24		20.5 - 25.5

* DECD could not give a firm answer on whether The Cottage will count as one point or five points, depending on whether they count the number of "structures" or beds. This chart assumes that the DECD counts it as one point.

**The responses to the 35 Leroy Request for Development Proposals remain under review at the time this Plan is being written. The final yield from the development will be a result of a number of factors, including, but not limited to, approval by the Planning and Zoning Commission. As a result, it must be noted that the number of units shown in this Plan and the income levels are for illustrative purposes only, and do not reflect a specific plan or planned course of action.

***This plan is still under review with Planning and Zoning Commission. The numbers in this chart are for illustrative purposes only and do not reflect approved plans at this time.

SHORT-TERM (2007-2012) – Moratorium #1 and Beyond

In the next five (5) years, it is projected that Darien will add between 62 and 83 units of affordable housing, through private and public housing developers. Some possibilities are listed below.

1020 Post Road

Baywater Properties recently constructed six units of housing on the third floor of a mixed use building at 1020 Post Road. Two of those units are currently being rented at affordable rates to a town employee and to a downtown retail employee. The property owner is considering deed restricting these two units for affordable housing. It is expected that these two units could be affordable to someone making 80% of the Area Median Income (AMI), which means those units will not count towards a moratorium, but could count towards the state mandated 10%.

The Cottage”, Edgerton Street

A private non-profit developer is in the process of constructing a five bedroom, facility for developmentally disabled adults on Town-owned property. State of Connecticut Department of Economic Development will need to make a decision on how many of those 5 units may count toward a moratorium and/or meet the state mandated 10%. Based on preliminary discussions with the State, one point is likely but it has not been determined if all five will count.

Former Darien Library property, 35 Leroy Avenue

Situated on 1.98 +/- acres, this site of the former Darien Library was vacated in December 2008. The Board of Selectmen has approved affordable housing at this site and has solicited Request for Proposals for adaptive reuse for owner-occupied and/or rental units. The land was purchased with an eye on affordable housing. The responses to the Request for Development Proposals remain under review at the time the plan being written. The final yield from the development will be a result of a number of factors including approval by the Planning and Zoning Commission. As a result, it must be noted that the number of units shown in this plan and the income levels are for illustrative purposes only and do not reflect a plan or planned course of action. It is now zoned R-1/3 and DR-1/DBR. Should the preferred developer wish, they could work with the Planning and Zoning Commission on establishing and applying a HOMEConnecticut overlay incentive housing zone at this site which could provide additional funding for each unit constructed.

Allen O’Neill housing, Allen O’Neill Drive

Built in the 1950s to accommodate war veterans returning home from World War II, this 10+ acre site, owned by the Housing Authority of Darien, is in the process of being redeveloped into approximately 111 units, an additional 57 units from the original development. Only those additional units developed can be used to count for points towards a moratorium. As of this writing, the Darien Housing Authority is in the process of seeking local approvals. The number of additional units built could count towards points for moratorium and/or the 10% state goals.

CareVentures, 599 Brookside Road, former Mediplex building

In 2008, the Planning and Zoning Commission met informally to discuss the potential number of affordable units at this site which was used prior as an assisted living facility. It was discussed as to whether all or some of the units could be affordable and thought to have a potential of approximately 3-4 units of affordable housing in an adaptive reuse development when the plan is presented to the Planning and Zoning Commission.

Inclusionary Zoning Units

The Inclusionary Zoning regulations were reviewed by the Planning and Zoning Commission in late 2008 and adopted on January 6, 2009 and will become effective May 31, 2009. These regulations require that each development of five (5) building lots in a subdivision or the building of any multifamily housing units (i.e., more than one dwelling unit) on a property shall designate at least

twelve percent (12%) of the dwelling units as affordable housing using the income limits applicable to 8-30g. In the alternative, the developer may, at the decision of the Planning and Zoning Commission, pay a fee in lieu of building such affordable units into a Darien Housing Trust Fund established by the Town.

EXHIBIT 7 POTENTIAL SHORT-TERM AFFORDABLE HOUSING CONSTRUCTION

<u>Short-term (2007-2012)/next 5 years</u>	Total	NET
	Number	Affordable
	<u>Units</u>	<u>Units</u>
Baywater Properties , 1020 Post Road	6	2
The six bedroom Cottage, 30A Edgerton Street	1	1
Former Darien Library property, 35 Leroy Avenue*	15-20	15-20
Allen O'Neill, Allen O'Neill Drive**	111	57
Care Ventures, 599 Brookside Road		3-4
Inclusionary Zoning Units	To Be Determined	To Be Determined

Notes:

**The responses to the 35 Leroy Request for Development Proposals remain under review at the time the plan being written. The final yield from the development will be a result of a number of factors including approval by the Planning and Zoning Commission. As a result, it must be noted that the number of units shown in this plan and the income levels are for illustrative purposes only and do not reflect a plan or planned course of action.*

***Allen O'Neill redevelopment is still under Planning and Zoning Commission review. Currently, there is no application put forth for Care Ventures.*

How to achieve a second moratorium

The full redevelopment of Allen O'Neill will not occur before the 2010 Census results are released, so the Town can expect that any second moratorium will not occur before 2012. At this time, there is no way to know how many points will be needed to achieve a second moratorium, since it is unknown how many total number of dwelling units will be in Darien in effect as of the 2010 Census. However, the number is certain to be greater than the 135.84 number used, since there has been a net gain of all dwelling units since the 2000 Census. A second moratorium could be pursued in the following way:

EXHIBIT 8
POTENTIAL FOR ACHIEVING A SECOND MORATORIUM

	Number of Affordable Units	Points Per Unit	Total Housing Equivalency Points
Allen O'Neill redevelopment (the 57th-111th units which get a Certificate of Occupancy)	54	1.5	81
Senior Center site	TBD	1.5	TBD
Careventures, Former Mediplex property, 599 Boston Post Road	3-4	1.5	4.5-6
Units constructed as part of Inclusionary Zoning.	5	1.5	7.5
Increased density at existing housing sites	20	1.5	30.0
TOTAL:	83		124.5

Note: Senior Center site does not have an application for development currently.

The above numbers are for illustrative purposes and do not reflect the total number of points toward a moratorium.

One important note is that if the income limits for the new Allen O'Neill units are based on Area Median Income rather than State Median Income, then these units will most likely not qualify for moratorium points under 8-30g. They will, however, qualify towards the overall ten percent (10%) goal set by 8-30g. The Darien Housing Authority has informally suggested that rents for new three and four bedroom units would be set at State Median Income levels. However, no binding determination has yet been made. A final determination of the number of points from this development will be based upon the final plans approved by the Planning and Zoning Commission, the units and restrictions established by the Darien Housing Authority, and final review of the restrictions by DECD.

MID-TERM
(2012-2017) – 2nd Moratorium and Beyond

Duhaime Property, Hollow Tree Ridge Road

3.7 acres, immediately to the east of AvalonBay properties, is now zoned 3.7AH, this property is already zoned for up to nine (9) units per net acre provided it is affordable housing. Under this zoning, 27-33 units could be constructed here, with 30% of those being affordable units, resulting in nine to eleven (9-11) affordable housing units.

Senior Center Property, Edgerton Street

The site at 30 Edgerton Street was analyzed by Redniss and Mead as part of a 2006 feasibility report, and even more recently, Perkins-Eastman prepared a draft "Master Plan". The site is 3.6+/- "usable" acres within the larger Middlesex Middle School property. Since the time that those two

reports have been written, the Cottage has been approved and is in the process of being built. It is likely to be occupied in 2009. There is potential for some housing to be built in this location.

HOMEConnecticut Housing Incentive Zones

Certain areas of the Town should be evaluated for the potential of affordable housing overlay zones. The incentives currently include:

- \$2,000 for every unit built
- Less density requirement than 8-30g

It should be noted that this is a new State incentive and the financial incentives are dependent on the number of municipalities who take advantage of this.

EXHIBIT 9 POTENTIAL MID-TERM AFFORDABLE HOUSING CONSTRUCTION

<u>Mid-Term (2012-2017)/5-10 years</u>	Total	NET
	Number	Affordable
	<u>Units</u>	<u>Units</u>
Duhaime property, Hollow Tree Ridge Road *	33	9-11
Senior Center property, Edgerton Street**	10	10
HOMEConnecticut Incentive Zones and Inclusionary Zoning	To be determined	To be determined

Notes:

**The Duhaime property has been zoned for affordable housing. This 3.7 acre property has been rezoned "3.7 AH Zone" but the owners have not yet come forward with any affordable housing plans.*

***There are currently no plans for affordable housing at the Senior Center site. The Town will need to take into account for how much both the property can bear out and the appropriate scale and density for the neighborhood.*

LONG-TERM OPPORTUNITIES

Old Town Hall Homes Renovation/Additions

Elderly rental housing, owned and operated by the Darien Housing Authority, may seek to redevelop and expand the housing at this site. Currently, there are 30 units of senior housing: 20 one-bedroom units and 10 efficiencies-moderate income senior housing. Typically, a building will have a fifty-year lifespan, so it can be assumed that these buildings, when redeveloped, could potentially increase in density.

AvalonBay Additional Density

There may be a need to expand this development in the future. Currently, there are a total of 47 units of affordable housing on 31.5 +/- acres.

Downtown and Noroton Heights

The DAHAC October 2007 report cites as additional zoning opportunities, the need to create a master land use plan for the Noroton Heights Shopping District. Goals would be to promote development of upper-floor housing in the area to accommodate more commercial and residential development, and make the area more of a mixed use district.

The 2006 Plan of Conservation and Development outlines the need for a diversity of housing types close to transportation facilities and within walking distance to local shopping both in Noroton Heights and downtown Darien.

Leroy West Commuter Parking Lot

4.0 +/- acres now zoned Parking Residential (PR): this site is located across Leroy Avenue from the Darien Train Station. There is potential for affordable housing to be constructed above the existing parking lot. Zoning regulation amendments would be required to implement such a project. The project should be designed to not reduce the availability of parking spaces for train commuters.

Existing Multi-Family Properties

Villager Pond, Middlesex Commons, Pine Brook, Sedgwick Village, and Darien Close: Currently there are two (2) affordable housing units at Villager Pond. It may be possible to create additional affordable, deed-restricted units at this development and other condominiums in two ways: 1) change zoning regulations to allow higher density in those locations and/or 2) purchase and deed restricted existing units.

Koons Property, West and Leroy Avenues

This property is listed within the Planning and Zoning Subcommittee report. Similar to the Leroy West parking lot, there is potential for affordable housing to be constructed above the existing surface parking lot.

WHY BUILD IT?

Gain Local Control

By planning wisely to develop affordable housing in suitable locations and with the public sector in leadership position, Darien can build attractive buildings in a timeframe that meets the Town's needs and desires, and determines where and how much to build. Darien can direct growth in ways that best suits the Town, take control, keep neighborhood integrity, and fulfill Darien's affordable housing needs.

Obtain Moratoria

To gain local control with Section 8-30g, Darien must build enough units of affordable housing to achieve a 4-year moratorium or have 10% of its housing units count towards being exempt from Affordable Housing Appeals. A moratorium is a four year period during which a community is not subject to Section 8-30g.. The First Selectman may request a moratorium from the Connecticut Department of Economic and Community Development (DECD) when the housing equivalency points equal 2%. The units must have been built after 1990, and must not be included in a previous or existing moratorium.

Meeting the Needs of the Town

- a. Older residents would be able to continue to live in their community where they have established bonds of family, friendships and church;
- b. It allows current residents who are on fixed incomes, who may need to downsize, and/or are struggling financially to remain in Town;
- c. Employees in Town such as Darien police officers, teachers, Board of Education and Town Hall staff who currently commute long distances can have the option to live closer, removing some of the highway congestion, and decreasing the environmental impacts of emissions and gas consumption; and
- d. It allows past Darien residents – young adults and families earning less than \$70,000- to return to their hometown. According to the 2000 Census, the Town continues to lose its base of young residents between the ages of 22-34 years. In 1990, Darien had almost 3,000 residents within this bracket, representing 16% of the town wide population. By the year 2000, less than 2,000 residents were part of this age group, representing only 10% of the total population. This means they may now be able to afford the down payment, when that was not a viable option.

Encourage Town Economics Drivers

Downtown Darien and Noroton Heights business districts provide the Town's economic opportunities and viability. Adding additional housing choices in these locations serves as both a nighttime population of activity and increased spending in Town. It may provide an opportunity for employees of businesses to live locally.

Environment and Transportation

Congestion on the roadways in Fairfield County has increased dramatically. Workers are seeking more affordable housing beyond Fairfield County, creating gridlock. Not only does the traffic mean frustration to the commuters, but the impact on the environment is detrimental. Living closer can remove some of the highway congestion and decrease the environmental impacts of emissions and gas consumption.

Provide Diversity of Housing Choices

Affordable housing comes in many forms: condominiums, large houses, cottages, apartments above retail. A range of sizes and locations near transit are necessary. The current affordable housing, like that of Villager Pond and Clock Hill Homes, through careful planning, zoning and design requirements can set an example of how and where to develop affordable housing units in Darien and will serve to be the future goals.

For all of the above reasons, it is important that Darien and Fairfield County increases its affordable housing stock.

WHAT ARE THE RISKS OF DOING NOTHING?

Affordable housing applications under Section 8-30g have occurred since the State enacted the Section 8-30g legislation in 1989, and Darien will continue to receive such applications. Since 1998, seven affordable housing applications per Section 8-30g of the Connecticut General Statutes have been submitted to the Planning and Zoning Commission, which includes one application now pending. Property owners, developers and speculators will continue to pursue the development of affordable housing in Darien. Whatever the intentions are, the development may or may not have appropriate set backs, may create too much density for the site, the Town's infrastructure, and it may be sited in unsuitable locations. This inevitably places a burden on Darien's Planning and Zoning Commission and possibly the Environmental Protection Commission should it involve development in or near wetlands. The Commissions would have to act in a timely manner creating more and longer meetings so that other items can be handled in an equally timely manner. Also, proactive planning time is needed which in turn creates additional time and costs for those decisions which were appealed.

This does not include other out-of-pocket expenses related to these applications, including but not limited to: the recording of the public hearings and general meetings by a stenographer, and the preparation costs of any transcripts. It is also difficult to pinpoint exactly how much staff time and effort has gone into the review and processing of each of these applications and staff's involvement in any subsequent litigation. Similarly, the exact amount of legal work directly associated with the processing and any subsequent appeal(s) is substantial on several levels. This is because of a number of factors, including, but not limited to, are:

- 1) Staff and or the local land use boards may need to consult with Town Counsel on tangential issues (for example, many of these applications also needed review and action by the Environmental Protection Commission);
- 2) Neighbors and others often bring up legal issues and concerns that the boards ask Counsel to review; and
- 3) These cases are more complex, and also more likely to end up in litigation.

It is also important to mention the amount of time and money some residents and neighborhoods will spend to oppose 8-30g applications, while those in less affluent neighborhoods may not be able to afford to hire private consultants and attorneys. One may assume that "wealthier" neighborhoods are better able to fund private professional testimony at land use hearings than neighborhoods that are less affluent. This provides yet another reason for the Town to take actions to make sure the Town plans in a thoughtful manner and gains local zoning control.

The only way for the Town to take control of appropriate development in how it relates to the location, density, and conformity to the Town's Plan of Conservation and Development is for the Town to become more active in the planning and actual construction of affordable housing in Darien. As of this writing, relief from private applications invoking 8-30g may only be obtained through four year moratoria until the ten percent (10%) goal set in the statute is achieved. However, for reasons previously discussed, there seems little likelihood that the ten percent (10%) goal can be achieved by Darien in the foreseeable future.

Darien is, therefore, confronted with the prospect of either: (1) giving up and permitting the private sector to build affordable housing wherever sufficient parcels of land can be assembled to make such developments feasible, subject of course to the litigation issues discussed above, or (2) attempting to work within the statutory framework to obtain relief from private 8-30g applications,

while simultaneously lobbying in Hartford for changes to the elements of 8-30g which are most troublesome to the Town. This latter course should be pursued by building, or encouraging the building of, enough affordable housing in suitable locations to achieve one or more four year moratoria from 8-30g while working with the Town's legislative delegation, as well as the legislative delegations of other communities that are similarly situated as Darien, for amendments to the statute.

CHAPTER II STATUS OF AFFORDABLE HOUSING

WHAT IS HAPPENING IN CONNECTICUT?

- According to the *Connecticut Partnership for Strong Communities*, the following are facts related to affordable housing within Connecticut:
- Housing costs have increased 3½ times faster than wages: Since 2000, housing costs have risen 63.6% while wages have risen 18.5%.
- Residents earning less than 80% of the Area Median Income and spending more than 30% of their income on housing was 26% of households in 2006, up from 19% just two years ago.
- Virtually all towns are unaffordable: In 2004, a family making median income couldn't qualify for the median sales price house in 102 of the state's 169 municipalities. By 2005, that number had risen to 157 towns.
- Young professionals are leaving Connecticut: Since 2000, Connecticut has lost a higher percentage of 25-34 year-old population than any other State.
- Workers are adversely affected: Workers employed in 16 of the 20 Connecticut occupations projected to grow fastest through 2012 won't be able to afford a typical 2 bedroom apartment. Of 630 occupations in Connecticut, the median wage of 321 of them is less than the state's \$20.42 housing wage, the hourly pay needed to afford that apartment.
- Labor pool is shrinking—businesses suffer: In CT Business & Industry Association's 2006 Annual Member Survey, 70% of executives said the lack of affordable housing in Connecticut makes it harder to attract new employees. 56% said the affordable housing problem is worsening.
- "Competition" from neighboring states: New York, New Jersey, Massachusetts, Rhode Island and other neighboring states are developing programs to build more housing for workers, families and young professionals, making them more attractive for business investment and job development.
- Housing supply is low: Connecticut was 47th among the states in construction of units per capita between 2000 and 2005. Lack of supply drives up prices.
- Poll responses underscore the problem: A May 2006 University of Connecticut/Hartford Courant poll found:
 - 43% of state residents have considered leaving Connecticut due to high housing costs.
 - 66% say housing in their communities is not very affordable or not affordable.
 - 55% say housing prices are an extremely serious or very serious problem.

- In 2007, the median household income in 142 of Connecticut's 169 municipalities could not qualify for a mortgage to buy the median sales price house, up from 102 in 2004.
- The Housing Wage, which is the wage needed to afford the typical two-bedroom apartment without paying more than 30% income on housing, continues to rise.
Stamford-Norwalk Housing Wage: \$31.58
State of Connecticut Housing Wage: \$21.11

RECENT STUDIES/PLANS

In addition to the 2007 Darien Affordable Housing Advisory Commission (DAHAC) report, there are four other very recent reports that have been issued within the past 2 ½ years that address affordable housing in Darien. They are:

- a) Connecticut Main Street Center Resource Team: An Action Plan for the Revitalization of Downtown Darien (May 2006).
- b) South Western Regional Planning Association (SWRPA) Regional Plan of Conservation and Development 2006-2015 and Regional Housing Supply Needs and Assessment 2007
- c) The Town of Darien 2006 Town Plan of Conservation & Development.
- d) Report to the Planning and Zoning Commission from the Affordable Housing Subcommittee July 10, 2007.

The major findings from each of these reports are briefly summarized below. All of them provide excellent resources in better understanding local affordable housing issues.

a) Connecticut Main Street Center Resource Team: An Action Plan for the Revitalization of Downtown Darien (May 2006):

In 2006, Connecticut Main Street, in review of Darien's downtown needs, drafted a guide for ways to "maintain and enhance the Town's unique charm, character and historic significance of Downtown Darien, ensure a variety of retail, dining and housing choices, as well as social and cultural activities, for residents and visitors of all ages".

The need for a better choice of housing options throughout Darien was highlighted as well as the establishment of design and architectural standards.

The goals to promote housing in downtown were outlined as such:

- 1) Support and advocate transit-oriented and affordable workforce housing in the downtown area.
- 2) Create an absorption study to identify the number of units that can be absorbed in the community over a certain period of time
- 3) Reuse of upper stories for housing may require new revisions in ordinances
- 4) Establish guidelines for housing as a part of commercial developments.
- 5) Create a master plan for downtown.

b) SWRPA Regional Plan of Conservation and Development, 2006-2015 and Regional Housing Supply Needs and Assessment 2007

The SouthWestern Regional Planning Agency focuses on issues of transportation, housing, environment and open space and provides a forum for local governments to foster communication and collaboration in addressing inter-municipal issues and needs.

SWRPA's Regional Plan of Conservation and Development specifically encourages:

- 1) Development of a broad range of housing alternatives, and whenever possible, direct new housing to locations that are served by transit;*
- 2) Plan for aging and increasingly diverse population;*
- 3) Protect the quality of life in all of the Region's neighborhoods by ensuring that areas of a community's concern are not targeted for the location of undesirable land uses.*

This plan clearly brings to light the problems that the region faces regarding affordable housing which include:

- 1) Most housing in the Region is not affordable to those who earn less than the Median Family Income (MFI). While many are able to find a house to rent, fewer are able to purchase a house. This is often the result of families spending more of their incomes on higher rents, making it more difficult for them to save for a down-payment on a house.*
- 2) Families living on \$80,000 incomes often find themselves struggling to live in the Region. As a result, the needs of that segment of the population earning between 80 and 120 percent of the Median Family Income (MFI) have become more prominent. These so-called "workforce" families represented 16 percent in 2000.*
- 3) The housing needs of the Region's elderly are also becoming more acute with the growth in this sector of the population.*
- 4) Mortgage and rental assistance is lacking for "workforce" families in the Region (those earning between 80-120 percent of the MFI) who are often unable to afford to purchase a house. Until programs are developed to provide workforce housing in the Region there will continue to exist an out-migration of these families to more affordable communities. Among other negative effects, the continuation of this trend will result in increasing levels of traffic congestion (as people drive longer distances between house and work) and rising salary requirements for the Region's employers, who will have to pay more to lure employees who must live relatively far from work to afford their own houses.*

c) Town Of Darien Plan Of Conservation And Development 2006

The main ideology within the Town's Plan of Conservation and Development regarding housing is that Darien should continue to be a residential community and because such, it is paramount, that all developments, be it affordable housing or market rate housing, be carefully designed to integrate to the existing neighborhoods. The Town should create a variety of housing opportunities with higher density near transportation facilities and within distance to local shopping both in Noroton Heights and in Downtown. Recommendations for such include the following considerations:

- 1) Preserve historic residences within the community by working with the Historical Society and using available methods such as the National Register, Village Districts or Historic Districts when possible.
- 2) Work with the Darien Housing Authority to ensure the viability and availability of affordable housing where and when possible. Also, consider the adoption of mechanisms which would facilitate the continued maintenance and operation of the Housing Authority's residential units;
- 3) Investigate the feasibility of allowing in-law/accessory apartments;
- 4) Expand the current size restrictions for condominiums.
- 5) Evaluate and consider amending the existing building coverage and height restrictions to maintain the character of the community.
- 6) Establishing regulations regarding impervious surfaces coverage restrictions to maintain the character of the community.
- 7) Develop incentives to encourage greater apartment construction in critical areas such as the Central Business District, Noroton Heights and adjacent areas.
- 8) Identify specific parcels that should be considered for affordable housing, as for instance the Darien Library property at 35 Leroy Avenue.
- 9) Adopt density incentives for congregate/cluster and condominium housing providing significant open space.

d) Report to the Planning and Zoning Commission from the Affordable Housing Subcommittee July 10, 2007.

In addition to the DAHAC study, a subcommittee of the Planning and Zoning Commission was formed to give those parties involved in affordable housing (DAHAC, Darien Housing Authority, Board of Selectmen, property owners and developers) some of the Planning and Zoning Commission's preliminary thoughts from a zoning standpoint on affordable housing issue, and to provide guidance on sites which have the most potential for affordable housing. The subcommittee looked at the town as whole. They found that the prime areas for affordable housing were those that are close to train stations, bus routes and/or shopping, listed potential areas to develop affordable housing, ways to develop affordable housing. Among some of the recommendations were:

- 1) Include in the Zoning Regulations the zones that allow affordable housing, increased densities, minimize setbacks, reduce road construction standards, allow greater building height, or relax other standards;
- 2) Comprehensive review of the zoning regulation amendments relative to affordable housing;
- 3) Re-evaluate the three existing multi-family zoning districts to determine their applicability to other areas of Town;
- 4) Determine whether to allow housing within existing office parks;
- 5) Explore how much of the commercial base may be converted to affordable housing and/or housing in general; and
- 6) Identify incentives that best support the affordable housing initiative, such as mixed-use development.

WHERE IS AFFORDABLE HOUSING BEST SUITED?

As mentioned in the previous section, the Planning and Zoning Subcommittee on Affordable Housing determined the prime areas for affordable housing: those that are close to train stations, bus routes and/or shopping with availability of public water and sewer. Other significant attributes are:

- 1) It must be served by town water and sewer and other major utilities;
- 2) There should be little or no impact on existing single-family residential neighborhoods, preferably adjacent to existing multi-family housing or in transitional areas;
- 3) Locate it where higher density housing now exists;
- 4) It is preferable to be sited on or near collector or arterial roads, not generally on local dead-end roads
- 5) Locate it near the two train stations and/or near bus lines. The concept of having higher density development located near public transit such as train stations could include Noroton Heights, downtown Darien, and some areas along Boston Post Road and near Goodwives Shopping Center;
- 5) There should be proper areas/locations for school bus stops and pickup;
- 6) Locate it near services and shopping.

“Potential Development Areas” were created. The sites meet the following criteria:

- 1) Now on or easily serviced by public water and sewer;
- 2) A Town-owned property OR A property on one of the following streets:
West Avenue, Boston Post Road,
Old King’s Highway North, Hoyt Street, Heights Road, Noroton Avenue (only from West Avenue to Maple Street).
- 3) Properties which already contain affordable housing:
AvalonBay property;
Allen O’Neill properties;
Old Town Hall Homes properties
- 4) Properties which are already zoned for higher densities
“Duhaime” Property on Hollow Tree Ridge Road
Existing multi-family properties: Villager Pond, Middlesex Commons, Pine Brook, Darien Close, etc.

The following streets were included:

Old King’s Highway South, West Avenue, Noroton Avenue, Boston Post Road

Old King’s Highway North, Tokeneke Road, Heights Road, Hoyt Street

ACTIONS TAKEN BY TOWN TO DATE

The Town has been proactive in addressing affordable housing over the past fifty (50) years in terms of developing a substantial amount of affordable approximately every ten (10) years. In addition to this development, other progress includes reports, policy statements and public participation in the way of forums and public meetings. The Town intensified these actions in the last three (3) years, as described below:

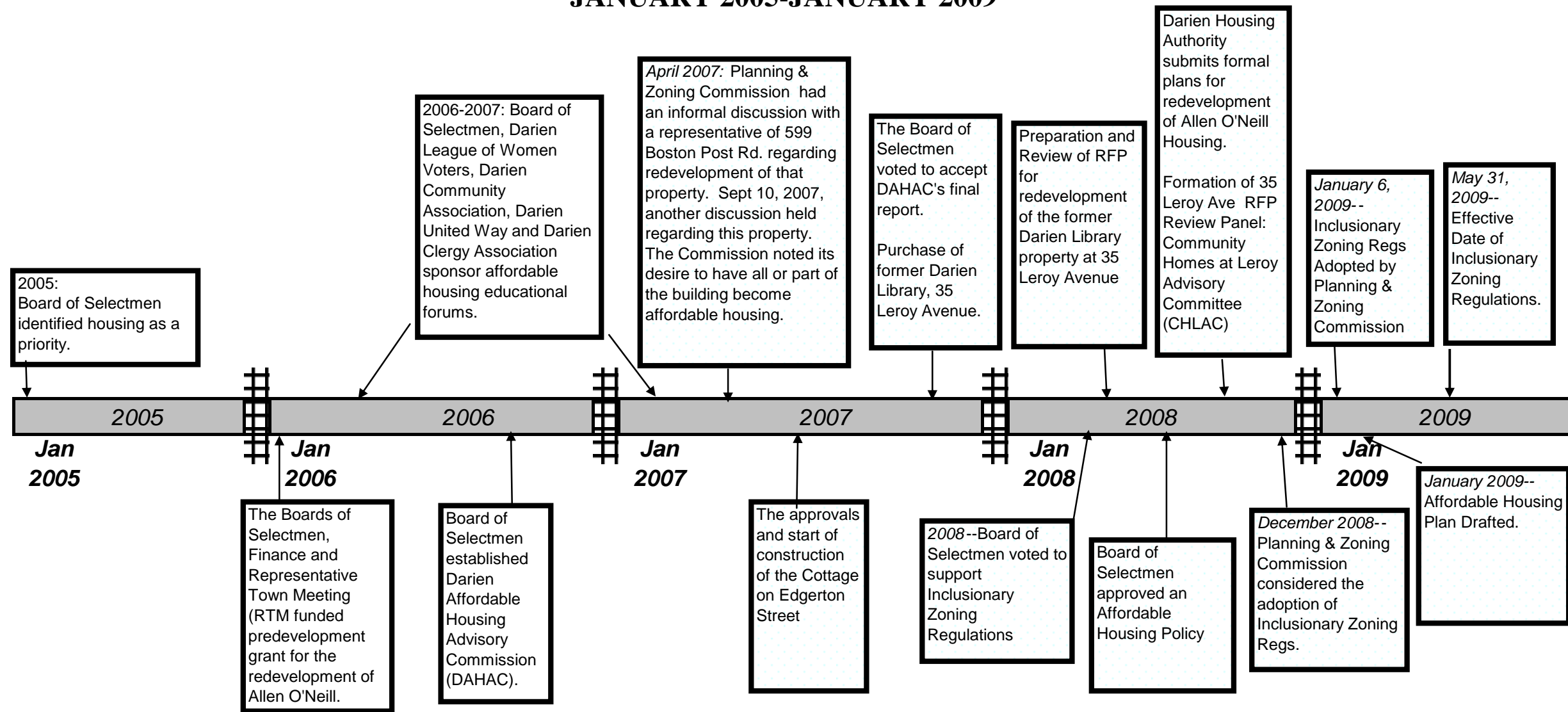
- 2005: the Board of Selectmen identified housing as a priority
- 2006: the Boards of Selectmen and Finance and Representative Town Meeting (RTM) funded predevelopment grant for the redevelopment of Allen O’Neill

- 2006-2007: Board of Selectmen, Darien League of Women Voters, Darien Community Association, Darien United Way and Darien Clergy Association sponsored affordable housing educational forums
- 2006: the Board of Selectmen established the Darien Affordable Housing Advisory Commission (DAHAC)
- 2007: the Board of Selectmen voted to accept DAHAC's Final Report
- In April 2007—the Planning and Zoning Commission had an informal discussion with a representative of 599 Boston Post Road regarding redevelopment of that property. In September 10, 2007, another discussion was held regarding this property, with the Commission noting its desire to have all or part of the building become affordable housing.
- the approvals and start of construction of the Cottage, on Edgerton Street (approved in 2007);
- The possibility of two affordable units at 1020 Boston Post Road (approved in 2007);
- purchase of the former Darien Library property at 35 Leroy Avenue (approved by the Board of Selectmen on July 11, 2007);
- The preparation of an RFP for redevelopment of that former Darien Library property at 35 Leroy Avenue (RFP responses were received in October 2008).
- The Housing Authority created plans for the redevelopment of the existing Allen O'Neill housing. A formal application was submitted to the Planning and Zoning Commission in October 2008, and a public hearing will be held in November 2008.
- 2008: the Board of Selectmen approved an Affordable Housing Policy
- 2008: the Board of Selectmen voted to support Inclusionary Zoning Regulations
- December 2, 2008: the Planning and Zoning Commission considered the adoption of Inclusionary Zoning Regulations.
- January 6, 2009—Inclusionary Zoning Regulations adopted by the Planning & Zoning Commission.
- May 31, 2009—Effective Date of Inclusionary Zoning Regulations

EXHIBIT 10

AFFORDABLE HOUSING TIMELINE

JANUARY 2005-JANUARY 2009



CHAPTER III ANALYSIS OF AFFORDABLE HOUSING NEEDS

DEMOGRAPHICS

Demographic information relating to housing was included in the 2006 Town Plan of Conservation & Development:

According to the 2000 US Census, the population of Darien was 19,607, which was an increase of 7.7% over 1990. This growth in population has had effects on the community, including a need from 1995-2005 to increase the size of all five elementary schools, the middle school, and the high school. The changes taking place in Darien's population have and will continue to influence the recommendations of this Town Plan. Younger families will have certain types of requirements concerning schools, recreational facilities, library services and social services. Meanwhile, older citizens may have different needs for recreational facilities, library services, as well as possible transportation needs, and other social service programs.

The increase in need for schools, recreational facilities, library services, social services translates to an increase in the demand for workforce – teachers, librarians, social workers, healthcare and emergency management, as well as increased retail and other service occupations. This need reinforces the desire to have affordable housing so that Darien can afford to keep quality employees in these positions in Town.

COST AND AVAILABILITY OF LAND

Waiting Lists for Affordable Housing

It is obvious just from the number of people totaling 235 on the waiting lists below that Darien has a need for more affordable housing. Many of the lists have had to close due to the large number on the lists and the length of occupancy at each. This number does not include AvalonBay, which would take the total number to approximately three-hundred (300).

According to Darien Housing Authority Director, Kathy Molgano, the waiting lists for those affordable housing units managed by the Darien Housing Authority are long and many have had to close. She has noted that as Allen O'Neill gets redeveloped, it is likely that the waiting lists will be reopened and people who are now on the list will be reviewed to ascertain their interest in the openings and to ensure that they still qualify for the housing.

Allen O'Neill: This list has been closed for number of years. The Housing Authority will open up that list again once the redevelopment is underway. Previously, there were fourteen (14) waiting on one-bedroom units, twenty-nine (29) waiting for two-bedroom units and fifteen waiting for houses. In all, there are 55 names on the waiting list, with seven of those applicants being from Darien. Of the 55 applicant households, there are a total of thirty children under 18.

EXHIBIT 11
WAITING LIST FOR ALLEN O'NEILL HOUSING

<u>Household Size</u>	<u># Households</u>	<u>Single</u>		<u># of Children Under 18</u>	<u># of Children 18 & Over</u>	<u>Darien Households</u>	<u>Total Persons</u>
One Person Households	14	14				3	14
Two Person Households	21			2		1	42
Three Person Households	12	12		18	6	1	36
Four Person Households	8	2	6	10	8	2	32
TOTAL							124

Source: Darien Housing Authority, December 2008

Clock Hill Homes: As of October 31, 2008, there are sixty-three (63) on the waiting list. Their general profiles are listed in the exhibit below. There are: 45 – One Person Households; 13 – Two Person Households; 4 – Three Person Households; 1 – Five Person Household. Of those, 37 Applicants are Darien Residents. The households include 9 children under 18, and 8 children age 18 & over.

EXHIBIT 12
WAITING LIST FOR CLOCK HILL HOMES

<u>Household Size</u>	<u># Households</u>
One Person Households	45
Two Person Households	13
Three Person Households	4
Four Person Households	0
Five Person Households	1
TOTAL	63

Source: Darien Housing Authority, December 2008

Old Town Hall Senior Housing: The waiting list closed in 2006 but will reopen January 2009. As of December 5, 2008, there were forty-eight (48) on its waiting list. Of those, 40 are one-person households, and eight are two person households. Eleven are Darien residents.

EXHIBIT 13
WAITING LIST FOR OLD TOWN HALL HOUSES HOUSING

<u>Household Size</u>	<u># Households</u>
One Person Households	40
Two Person Households	8
TOTAL	48

Source: Darien Housing Authority, December 2008

The chart below shows there is an original income limit for entrance to these senior housing units and residents are not penalized should their income increase over the years. It allows them to continue to live in the unit should their incomes levels increase to a prescribed maximum.

EXHIBIT 14 INCOME LIMITS WITHIN SENIOR HOUSING UNITS

<u>Admission Limits</u>		<u>Continued Occupancy Limits</u>
\$ 53,600	for 1 person	\$ 67,000
\$ 61,250	for 2 persons	\$ 76,562
\$ 68,900	for 3 persons	\$ 86,125
\$ 76,550	for 4 persons	\$ 95,687
\$ 82,650	for 5 persons	\$ 103,312
\$ 86,800	for 6 persons	\$ 111,000

Source: Darien Housing Authority April 22, 2008 Resolution

Similarly, the waiting list for the forty-seven AvalonBay Communities' affordable units is closed. This waiting list is maintained by AvalonBay.

AFFORDABILITY GAP

The high value of real estate in Darien and the region as a whole makes it difficult to impossible for many persons to afford rentals and market-rate housing in Darien. Darien is nearly "built-out", which results in limited opportunity to purchase vacant land of any substantial size. Because of demand, land costs are also high in Darien, in excess of \$1 million an acre in some cases.

Rental Costs

The average costs of available rental units are significantly higher and out of reach of many persons who wish to live in Darien.

EXHIBIT 15 RENTAL COSTS IN DARIEN

RENTALS IN DARIEN	Yearly Rental	Income Needed to Afford Unit (Based on 1/3 Gross Income on Housing)
1 Bedroom apartments: \$1,500 - \$2,800	\$18,000 - \$33,600	\$60,000 - \$112,000 (avg: \$86,000)
2 Bedroom apartments: \$1,800 - \$2,300	\$21,600 - \$27,600	\$70,000 - \$ 90,000 (avg: \$80,000)
3 Bedroom House Rentals: \$2,500 - \$3,200 (3BR)	\$30,000 - \$38,400	\$100,000 - \$128,000 (avg: \$114,000)

Source: Darien News Review Nov 2008, Realtor.com

As shown from the exhibit above, the average “affordable” rentals are significantly higher and out of reach of many persons who wish to live in Darien. For instance, taking the higher threshold of affordability, a family of four making 80% of the Area Median Income (\$94,240) has a significant affordability gap for a market rate three bedroom house rental.

Per 8-30g, there is a formula to be used when calculating what a rental unit should cost and what home can be sold for. Regulation 8-30g-8 of the Connecticut State Agencies (*Appendix C*) provides that criteria. Below is an example of the maximum monthly rents for a family of two and a family of four.

EXHIBIT 16
MAXIMUM MONTHLY RENT CALCULATIONS
PER SECTION 8-30G-8 OF THE REGULATIONS OF
CONNECTICUT STATE AGENCIES

<i>Family Size</i>	<i>Family of 2</i>	<i>Family of 4</i>
State Median Income (SMI)	\$82,100	\$82,100
Adjust Family Size	x 80%	x 100%
Per HUD requirements	65,680	82,100
x 30% income	19,704	24,630
Divide by 12 months	1,642	2,053
x 120% (HUD Fair Mkt Rent)	1,970	2,464
lesser of two	1,642	2,053
Reasonable monthly expenses (heat and utilities)	- 300	-350
MAX MONTHLY RENT	\$1,342	\$1,703

Source: Regulations of the Connecticut State Agencies 8-30g-8 (Appendix C)

Housing Costs

The average costs of available houses as of 2008 are also significantly higher and out of reach of many persons in Darien. The average house in Darien costs approximately \$1.7 million. Median sales prices in Darien over the last ten years grew faster than the median household income in the State. Households need to earn 130 percent of the Area Median Income (\$153,140) to afford a median priced house in Darien.

To put this in perspective, a person who earns 80 percent of the Area Median Income (\$117,800) earns a maximum of \$94,240 per year. Thirty percent of this income is \$28,272 or \$2,356 per month, meaning they could afford a house that costs \$450,000, given a down payment of 10%. Currently, there are only two houses in Darien on the market in that price range. The average starting price for one-bedroom condominium units in Darien is \$500,000. The average sales price of a home is \$1.7 million.

SCHOOLS

There is a perception that affordable housing will inundate the school system and cause taxes to rise, as the majority of the Town budget is school costs. Studies have indicated that a single family housing unit will have about twice the average impact on school systems from school-aged children than from any form of multifamily housing unit. Each single family unit, on average, produces 0.64 school age children while an apartment will produce about 0.21 children per unit, depending on the number of bedrooms (*Source: Urban Land Institute*).

According to the Rutgers University Study (“Residential Demographic Multipliers, Estimates of the Occupants of New Housing”, 2006), in Connecticut, there is a decrease in school-aged children across all grades from single family houses to multifamily.

School-age Children Statistics:

AvalonBay (Total of 189 units, 47 affordable units): total of 49 students (Holmes – 24; Middlesex – 12; High School – 13)

Allen-O’Neill (53 units): total of 17 students (Royle – 5; Middlesex – 4; High School – 8)

Source: Darien Board of Education as of November 17, 2008

While population may increase in any given year, school enrollment is generally cyclical in nature. The exhibit below shows enrollments increasing from 1990-2008. It then shows a projected peak in a few years, with a projected decrease in enrollment thereafter. The same 2007 Darien Public Schools Enrollment Report shows detailed enrollment information by grade from 1951 on. That data shows that there were over 5,000 students in the Darien schools from 1963-1974. That report also notes the decline in enrollment from the mid-1980s to the mid-1990s, when there were less than 3,000 children in the schools.

EXHIBIT 17
DARIEN SCHOOL ENROLLMENTS
1990-2008 AND PROJECTED

SCHOOL YEAR	BIRTH YEAR	BIRTHS	K-5	6-8	9-12	TOTAL
1990-91	1985	262	1,388	555	733	2,686
1991-92	1986	216	1,454	577	677	2,717
1992-93	1987	224	1,518	584	666	2,768
1993-94	1988	251	1,577	625	676	2,878
1994-95	1989	248	1,644	622	676	2,957
1995-96	1990	293	1,765	633	704	3,125
1996-97	1991	314	1,863	642	747	3,269
1997-98	1992	299	1,861	684	751	3,327
1998-99	1993	346	2,006	718	749	3,512
1999-00	1994	355	2,079	790	769	3,676
2000-01	1995	374	2,158	805	814	3,799
2001-02	1996	354	2,149	878	873	3,927
2002-03	1997	365	2,216	955	911	4,116
2003-04	1998	365	2,303	982	958	4,284
2004-05	1999	334	2,331	1,065	951	4,378
2005-06	2000	351	2,292	1,054	1,091	4,468
2006-07	2001	337	2,316	1,100	1,142	4,587
2007-08	2002	318	2,304	1,117	1,202	4,663
PROJECTED	BIRTH YEAR	BIRTHS	K-5	6-8	9-12	TOTAL
2008-09	2003	296	2,273	1,119	1,279	4,710
2009-10	2004	334	2,232	1,152	1,290	4,713
2010-11	2005	309	2,199	1,123	1,351	4,713
2011-12	2006	312	2,156	1,122	1,379	4,697
2012-13	2007	312	2,143	1,077	1,404	4,666
2013-14	2008	312	2,108	1,082	1,408	4,637
2014-15	2009	312	2,101	1,048	1,393	4,581
2015-16	2010	312	2,077	1,058	1,364	4,540
2016-17	2011	312	2,081	1,022	1,343	4,485
2017-18	2012	312	2,081	1,015	1,322	4,457

Source: Darien Board of Education, Darien Public Schools 2007 Enrollment Report, October 1, 2007 and State of Connecticut.

CHAPTER IV: STRATEGIES

In order to bring back control of the Town's local zoning for all developments, provide affordable housing, and to establish paths toward moratoria, the following strategies, which are grouped by category rather than any particular order, are proposed:

PLANNING AND ZONING REGULATION STRATEGIES

Strategy #1: *Adopt Affordable Housing Plan.*

Objective: *Create an Affordable Housing Plan*

Entities Needed to Implement: Board of Selectmen

<u>Activities</u>	<u>Implementation Timeframe</u>
Board of Selectmen	2009

Strategy #2: *Implement Inclusionary Zoning Regulations.*

Objective: *This will require any future multi-family developments or subdivisions of five lots or more to either construct affordable housing as part of the project and/or contribute to an Affordable Housing Trust Fund, which would go toward the future construction and/or maintenance of affordable housing.*

Entities Needed to Implement: Planning and Zoning Commission, Planning Staff

<u>Activities</u>	<u>Implementation Timeframe</u>
Public Hearings and Adoption	Effective May 31, 2009

Strategy #3: *Provide "workforce" housing through HOMEConnecticut Affordable Housing Incentive Overlay Zone.*

Objective: *These would allow additional "affordable" units while providing funding from the State of Connecticut to the developers for each affordable unit built following certificates of occupancy. One likely site could be the former Darien library site at 35 Leroy Avenue.*

Entities Needed to Implement: Planning and Zoning Commission

<u>Activities</u>	<u>Implementation Timeframe</u>
Map out zones/Public Hearings	2009

Strategy #4: *Proceed with the redevelopment of the Allen O'Neill site.*

Objective: *Redevelop existing site, adding up to 57 new units.*

Entities Needed to Implement: Darien Housing Authority, Planning and Zoning Commission, Board of Selectmen for road changes.

<u>Activities</u>	<u>Implementation Timeframe</u>
Gain approvals for, and redevelop Allen O'Neill Housing	2009-2012 (multi-year)

Strategy #5: *Implement Zoning Regulation Changes as outlined in the Planning and Zoning Subcommittee report.*

Objective: *This includes three existing multi-family zoning districts as well as their applicability to other areas of Town.*

Entities Needed to Implement: Planning and Zoning Commission

<u>Activities</u>	<u>Implementation Timeframe</u>
Staff Mapping/Public Hearings	2009-2010

Strategy #6: *Amend the Town Plan of Conservation & Development to include a master plan for Noroton Heights which would allow a mix of affordable and market-rate housing on the upper-floors.*

Objective: *This master plan, which would logically be part of an amendment to the 2006 Town Plan of Conservation & Development, formally reviewed and approved by the Planning and Zoning Commission, could be the impetus for future zoning regulation amendments. These amendments could change the existing zoning along Heights Road to allow mixed-use development, and possibly incentives to create affordable housing. Because this area is on public water and sewer and near the Noroton Heights Train Station and a bus line, is a logical area to consider for affordable housing.*

Entities Needed to Implement: Planning and Zoning Commission

<u>Activities</u>	<u>Implementation Timeframe</u>
Research/Public Hearings/Adoption	2009-2010

Strategy #7: Consider allowing accessory apartments and require these units to be affordable, deed restricted units.

Objective: Allow new housing to be constructed which would be in the form of deed-restricted accessory apartments. DAHAC will assist.

Entities Needed to Implement: Planning and Zoning Commission, Planning Staff

<u>Activities</u>	<u>Implementation Timeframe</u>
Study issue; prepare draft regulations	2009-2010
Hold public hearing(s); Possibly adoption	

Strategy #8: Allow third floor development in areas along and near the Downtown, other appropriate commercial areas, and in close proximity to major transportation routes.

Objective: Allow third floor development in areas along and near the Downtown, other appropriate commercial areas, and in close proximity to major transportation routes.

Entities Needed to Implement: Planning and Zoning Commission and staff.

<u>Activities</u>	<u>Implementation Timeframe</u>
Proposal/Public Hearing/Adoption	2009-2010

Strategy #9: Establish benchmark criteria that best harmonizes any affordable housing development with the existing zoning.

Objective: Encourage the creation of affordable housing while addressing the concerns of the neighbors and the community as a whole. A “zoning template” for such housing would be consistent as related to:

*Minimum lot size;
Number of units per acre (density);
Setbacks and buffers – front/side/rear;
Maximum building height;
Required on-site parking;
Designated open space.*

Entities Needed to Implement: Planning and Zoning Commission

<u>Activities</u>	<u>Implementation Timeframe</u>
Create “template”	2009-2010

HOUSING PRODUCTION AND PRESERVATION STRATEGIES

Strategy #10: *Establish and fund the Housing Trust Fund.*

Objective: *1) Redevelop and maintain current affordable housing stock; 2) Purchase sites that where affordable housing could be developed, keeping in mind siting issues and maintaining the character of Darien's residential neighborhoods.*

Entities Needed to Implement: Board of Selectmen, Board of Finance, RTM

<u>Activities</u>	<u>Implementation Timeframe</u>
Use funds to achieve Objective	Ongoing

Strategy #11: *Consider a condominium purchase program whereby the Town could subsidize the purchase or "buy down" the purchase of units that become available and deed restrict them as affordable in perpetuity.*

Objective: *Future funds within the Affordable Housing Trust Fund could be used for this purpose.*

Entities Needed to Implement: Board of Selectmen, Board of Finance, Representative Town Meeting

<u>Activities</u>	<u>Implementation Timeframe</u>
Use Housing Trust Funds	Ongoing

Strategy #12: *Maximize the Potential of Existing Properties.*

Objective: *Encourage the conversion of existing housing stock by offering homeowners a tax reduction in exchange for temporary deed restriction on their houses. The duration of this temporary deed restriction or covenant could be limited to the period of the individuals need. Study possible zoning changes to allow deed-restricted accessory apartments. The lease shall include a deed restriction. Allow the addition of new dwellings such as cottages or caretaker quarters on larger existing properties provided the unit qualifies as affordable.*

Entities Needed to Implement: Board of Selectmen, Board of Finance, Representative Town Meeting, Town Staff

<u>Activities</u>	<u>Implementation Timeframe</u>
Establish Criteria and plan	2009 - ongoing

Strategy #13: *Create housing within new commercial development.*

Objective: *Adopt new zoning regulations encouraging mixed use in appropriate locations. The commercial developer would then be required to build residential dwellings as an appropriate percentage of the commercially developed square footage, with a certain percentage of that new housing being affordable.*

Entities Needed to Implement: Planning and Zoning Commission

<u>Activities</u>	<u>Implementation Timeframe</u>
Draft new regulations	2009-2011

BUILD LOCAL CAPACITY STRATEGIES

Strategy #14: *Ongoing education campaign.*

Objective: *Educate the Town's residents about the needs and benefits of affordable housing.*

Entities Needed to Implement: Board of Selectmen, Darien Affordable Housing Advisory Commission (DAHAC)

<u>Activities</u>	<u>Implementation Timeframe</u>
	Ongoing

Strategy #15: *Create an information clearinghouse through DAHAC and the Planning and Zoning Department.*

Objective: *Provide potential developers with needed information such as median income levels, appropriate locations for development, and Towns' needs. Create and maintain an inventory of properties suitable for affordable housing.*

Entities Needed to Implement:

<u>Activities</u>	<u>Implementation Timeframe</u>
	Ongoing

Strategy #16: *Encourage and continue training for Boards and Commission members and staff.*

Objective: *Boards and Commission members to better understand 8-30g, but also to get an understanding of affordable housing options.*

Entities Needed to Implement:

<u>Activities</u>	<u>Implementation Timeframe</u>
Training sessions held throughout the year By various agencies and entities	Ongoing

Strategy #17: *Pursue available grants for the construction and maintenance of affordable housing.*

Objective: *Seek and obtain State and Federal grants, minimizing tax impacts to Darien residents.*

Entities Needed to Implement: Planning Staff

<u>Activities</u>	<u>Implementation Timeframe</u>
HomeConnecticut	June 2008 – June 2009
Other Grants: To Be Determined.	Ongoing

Strategy #18: *Use the legal authorities available to the municipality creatively and prudently in order to further affordable housing development.*

Objective: *Lobby for changes to CGS 8-30g and get further clarification from DECD on existing affordable housing. Some ideas for modifications to existing CGS 8-30 could include: 1)Have Area Median Income restricted units count towards a moratorium; 2)Allow caretakers quarters and other housing for on-site workers (such as the country clubs) to count towards 8-30g and/or a moratorium; and 3) Allow regional consideration to be taken regarding 8-30g, which may allow entire regions to qualify for a moratorium.*

Entities Needed to Implement: Planning Staff, Legal Counsel, Town's legislative delegation to the General Assembly.

<u>Activities</u>	<u>Implementation Timeframe</u>
Meetings with Various State Departments And Legislators	Ongoing

As mentioned in Strategy #18, Objective #3 above, there should be ways for the State to allow regional consideration to be taken regarding 8-30g. The charts below show that the Stamford-Norwalk HMFA of which Darien is a part of, provides a significantly high percentage of affordable housing. Comparatively, the Danbury HMFA region has less. While each HMFA is not compared, this could give some weight to argue for those changes in 8-30g amendments to reflect more of a regional or HMFA sector analysis.

**EXHIBIT 17
STAMFORD-NORWALK HMFA AFFORDABILITY**

STATE AFFORDABLE HOUSING LIST-2007						
Stamford-Norwalk HMFA						
TOWN	2000 CENSUS HOUSING UNITS	GOVERNMENTALLY ASSISTED UNITS	CHFA MORTGAGES	DEED RESTRICTED	TOTAL ASSISTED	PERCENT
Darien	6,792	89	1	32	122	1.80%
Greenwich	24,511	1,189	3	5	1246	3.14%
New Canaan	7,141	145	2	31	178	2.49%
Norwalk	33,753	2,965	250	503	3,718	11.01%
Stamford	47,317	5,015	265	1,121	6,401	13.53%
Weston	3,532	1	0	0	1	.03%
Westport	10,065	209	4	3	216	2.15%
Wilton	6,113	90	3	69	162	2.65%
Total	139,224	9,703	528	1,764	12,044	8.65%

Source: CT. Department of Economic and Community Development

**EXHIBIT 18
DANBURY HMFA AFFORDABILITY**

STATE AFFORDABLE HOUSING LIST-2007						
Danbury HMFA						
TOWN	2000 CENSUS HOUSING UNITS	GOVERNMENTALLY ASSISTED UNITS	CHFA MORTGAGES	DEED RESTRICTED	TOTAL ASSISTED	PERCENT
Bethel	6653	216	52	46	314	4.72%
Brookfield	5781	37	37	24	98	1.70%
Danbury	28519	2472	278	180	2930	10.27%
New Fairfield	5148	0	20	7	27	2.24%
Newtown	8601	139	10	15	164	1.91%
Redding	3086	0	0	0	0	0.00%
Ridgefield	8877	148	10	0	158	1.78%
Sherman	1606	0	1	0	1	0.06%
TOTAL	68271	3012	408	272	3692	5.4%

Source: CT Department of Economic and Community Development

Strategy #19: *Work with key non-profit developers such as parishes, Housing Development Fund.*

Objective: Invite religious community and non-profits to work with the Town to deed restrict current affordable housing units that exist on their properties.

Entities Needed to Implement: Planning Staff

<u>Activities</u>	<u>Implementation Timeframe</u>
Outreach	Ongoing

Strategy #20: *Monitor other actions taken in neighboring towns/cities to address affordable housing.*

Objective: *This may provide ideas for possible implementation in Darien. Communities such as New Canaan and Westport are struggling with similar issues in terms of finding appropriate sites for such housing.*

Entities Needed to Implement: Planning Staff

<u>Activities</u>	<u>Implementation Timeframe</u>
Outreach and Research	Ongoing

APPENDIX A
INCLUSIONARY ZONING REGULATIONS
ADOPTED BY THE PLANNING AND ZONING COMMISSION
TO BECOME EFFECTIVE MAY 31, 2009

SECTION 580. INCLUSIONARY ZONING

581. Background and Purposes

These regulations are intended to encourage the development of below market rate dwelling units within the Town of Darien, consistent with Section 8-2(i) of the General Statutes of Connecticut.

582. Applicability

Inclusionary Zoning Regulations shall apply to all zones that allow dwelling units as a principal or special permit use.

583. Below Market Rate Requirements

Developments resulting in the creation of additional multi-family dwelling units shall designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate. For the purpose of this regulation, the term multi-family is defined as a single property with two or more dwelling units, whether attached or detached. Dwelling units constructed pursuant to Section 405e. are exempt from the requirements of this regulation.

Single-family subdivisions or re-subdivisions resulting in a total of five or more building lots shall designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate. All other single family subdivisions are exempt from the requirements of this regulation.

The below market rate requirement shall be satisfied by: providing below market rate dwelling units on the subject property; providing below market rate dwelling units elsewhere within the Town of Darien; or paying a fee in lieu; or providing some combination thereof.

At least half of the below market rate (BMR) dwelling units shall be affordable to households with an income equal to or less than 80 percent of the State Median Income for the State of Connecticut and the remainder of the below market rate dwelling units shall be affordable to households with an income equal to or less than 110 percent of the Area Median Income for the Standard Metropolitan Statistical Area encompassing Darien. If an odd number of below market rate units is being constructed, the higher number of units shall be constructed at the 80 percent number. For example, if the requirement is to construct one BMR unit, then it shall be at the 80 percent number. Household incomes are published by the United States Census Bureau and periodically updated by the U.S. Department of

Housing and Urban Development (HUD). Income levels are to be adjusted for household size per HUD requirements.

584. Below Market Rate Dwelling Unit

A below market rate (BMR) dwelling unit is defined as a dwelling unit occupied by an income-eligible household as described in the Section 583 where the maximum sales price or rent shall be restricted for forty years or the life of the unit, whichever is longer, using the methodology for maximum housing payment calculations outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies.

585. Incentives

Developments subject to the provisions of Section 580, except for single-family subdivisions, may, at the absolute discretion of the Commission, be eligible for an increase in permitted density up to 50 percent greater than the allowed density provided at least 25 percent of such incentive units are designated as below market rate and the Commission determines that such incentives do not adversely affect the health, safety and welfare of the public in general, and the immediate neighborhood. In such cases, the Commission may, at the absolute discretion of the Commission, allow any or all of the following waivers, provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood:

- a. Recreational or open space requirements may be reduced.
- b. Minimum yard requirements may be reduced.
- c. Maximum building coverage requirements may be increased.
- d. Parking requirements may be reduced.
- e. Height may be increased to allow three stories.

In no case shall the Commission approve a waiver described in a. through e. above, resulting in a requirement that deviates by more than 25% from the originating regulation.

586. Priority Population

The below market rate dwelling units shall be offered for sale or rent to income-eligible households in accordance with the following priority designations:

- a. Individuals or families who live and work in the Town of Darien who provide volunteer emergency/life saving services for residents of the Town.
- b. Individuals or families who are employed by the Town of Darien or Darien Public School system.
- c. Individuals or families who live and work in the Town of Darien.
- d. Individuals or families who live in the Town of Darien.
- e. Individuals or families who work in the Town of Darien.
- f. Individuals or families who previously lived for a minimum of one (1) year in the Town and wish to return.

- g. All other individuals or families.

587. Program Administration

Prior to the issuance of any Certificate of Occupancy, any application under Section 580 shall identify the non-profit entity or property manager who will be responsible for program administration. The program administrator is subject to the approval of the Commission or its designated representative. The program administrator shall:

- a. Annually review and certify to the Commission the annual income of households residing in below market rate dwelling units in accordance with a procedure established in advance and approved by the Commission.
- b. Maintain a list of eligible households in each category, as described in Section 586, who have applied for participation in the program. Applicants within each category shall be selected by lottery, conducted in accordance with a procedure established in advance of said lottery and approved by the Commission, or its designated representative.
- c. Annually certify to the Commission that the selected household actually resides in the below market rate dwelling unit.
- d. Certify to the Commission that below market rate dwelling units sold or re-sold do not exceed the maximum purchase price as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.
- e. Certify to the Commission that below market rate dwelling units for rent shall not exceed the maximum monthly rent as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.

588. Additional Standards

- a. On-Site: Below market rate dwelling units shall be reasonably dispersed throughout the development and shall contain, on average, the same number of bedrooms and shall be indistinguishable from market rate units with respect to the exterior finishes, including landscaping, but interiors may include standard finishes and need not be of 'luxury' quality. Those units shall be designed and located to maintain the architectural elements and character of the neighborhood.

(1) Example: Nine lot subdivision:

The total number of on-site units proposed is nine (9).

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 1.08 = .54$.

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 1.08 = .54$.

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% level, and no unit is needed for the 110% level. The remaining .08 units would have to be fulfilled via fee in lieu at the 110% level standard

$$0.08 \times \$117,800 \times 225\% = \$21,204.$$

(2) Example: Nine multi-family units to be constructed:

The total number of on-site units proposed is nine (9).

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 1.08 = .54$.

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 1.08 = .54$.

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% level, and no unit is needed for the 110% level.

The Commission could grant up to 4 additional units as a bonus (1/2 of 9 rounded down), provided that these units meet a 25% affordability standard (Section 585).

Now there are 13 units

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

25% of the 4 bonus units will need to be affordable = 1.00.

Now, there are two required affordable units, one at the 80% level, and one at the 110% level, with the remainder being a fee-in-lieu calculated as:

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times .08 = .04$

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times .08 = .04$

The Area Median Income for a family of four is \$117,800 (2008).

The cash contribution is calculated as follows:

$$0.04 \times \$117,800 \times 300\% = \$14,136$$

$$0.04 \times \$117,800 \times 225\% = \$10,602$$

The total fee in lieu payment is: \$24,738

- b. Phasing: Below market rate dwelling units shall be developed simultaneously with or prior to the development of the other units on a pro rata basis.
- c. Deed Restrictions: In order to maintain below market rate dwelling units for forty years or the life of the unit, whichever is longer, the following restrictions shall apply:
 - (1) Below market rate dwelling units for sale shall be restricted by title to require that, in the event of any resale by the owner or any successor, the resale price shall not exceed the then maximum sales price for said dwelling unit, as determined in accordance with Subsection 587d above or the sum of the

original purchase price and the cost of any documented fixed improvements made by the owner, whichever is greater.

- (2) Below market rate dwelling units for rent shall be restricted by title to require that the rents for said units shall not exceed the maximum rent as determined annually in accordance with Subsection 587e above.
- d. Alternative Sites: The Commission may, at its absolute discretion, approve the construction or rehabilitation of the required below market rate dwelling units on another site in Darien, provided that such off-site below market dwelling units shall be maintained for forty years or the life of the unit, whichever is longer, in the same manner as on-site units. The Commission may condition the issuance of certificates of occupancy for the development project with the completion of the off-site below market rate dwelling units or establish other reasonable performance conditions necessary to insure that the off-site units will be built in a timely manner.
- e. Payment of a Fee: The Commission, at its absolute discretion, may require the applicant to pay a fee in lieu of constructing some, or all, of the required below market rate housing units. Such fee shall take the form of a one time cash contribution to a Town of Darien housing trust fund, or other Commission approved non-profit or for-profit organization dedicated to below market rate housing initiatives. Said funds shall be paid prior to the issuance of the first Zoning Permit. Units created with such funds shall be designated as below market rate in the same manner as required in Section 584. The cash contribution provided for each dwelling unit, or fraction thereof, shall be as follows:
- (1) Units affordable to households earning 80 percent of the State Median Income for the State of Connecticut require a cash contribution equal to 300% of the Area Median Income for a family of four.
 - (2) Units affordable to households earning 110 percent of the Area Median Income for the Standard Metropolitan Statistical Area encompassing Darien require a cash contribution equal to 225% of the Area Median Income for a family of four.
 - (3) Example: cash contribution based on 2008 data:
The total number of on-site units proposed is five (5).
The number of BMR dwelling units required: $5 \times 12\% = 0.6$.
The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 0.6 = 0.3$.
The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 0.6 = 0.3$.
The Area Median Income for a family of four is \$117,800 (2008).
The cash contribution is calculated as follows:
 $0.3 \times \$117,800 \times 300\% = \$106,020$
 $0.3 \times \$117,800 \times 225\% = \$79,515$
The total fee in lieu payment is \$185,535.

(Note: As of the adoption of this Regulation, the 2008 Area Median Income data was the most recent available. As time changes, this data will change. The most recent data from HUD at the time the application is filed shall be used for this calculation).

- f. Where the contribution is targeted to assist an identified off-site project providing below market rate dwelling units, the Commission may, at its absolute discretion, condition the issuance of certificates of occupancy for the development project with the completion of the off-site below market rate dwelling units or establish other reasonable performance conditions necessary to insure that the off-site units will be built in a timely manner.
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APPENDIX B HOUSING TERMS

ACCESSORY APARTMENTS: a form of housing that is integrated into single family neighborhoods, and is accepted in a growing number of communities. Examples include freestanding cottages, small apartments attached to a main residence, or apartments over free standing garages. These may or may not be restricted as affordable units.

ADJUSTED GROSS INCOME: Income after standard deductions set by federal guidelines.

AREA MEDIAN INCOME (AMI): the amount which divides the income distribution of area families into two equal groups: half of the families having incomes above the median and half of the families having incomes below the median.

CONNECTICUT HOUSING FINANCE AUTHORITY (CHFA) was created by the State legislature to help alleviate the shortage of affordable housing for low and moderate income individuals and families in CT. CHFA administers State and Federal housing tax credit programs, and provides financing for the development of multifamily housing, and provides mortgage financing for first time homebuyers.

COVENANT OR RESTRICTION: an enforceable requirement, in the form of a covenant, restriction or similar mechanism, contained in a deed that is recorded on the land records of the municipality in which the subject dwelling unit or set aside development is located.

DECD: Department of Economic and Community Development. Connecticut State Department that regulates/controls 8-30g moratorium requests, compliance to 8-30g, and 10% affordable targets.

DENSITY BONUS: permits the developers to increase setbacks, footprints, parking regulations, and/or height requirements if they include affordable units in their development.

EXTREMELY LOW INCOME HOUSING: Households whose income is less than or equal to 30% of area median income (see AMI).

FAIR HOUSING: Federal law that makes discrimination based on race, color, national origin, religion, sex, family status, or disability illegal when trying to rent or buy a home.

FAIR MARKET RENT (FMR): Rent guidelines for various sized units (studio, 1BR, 2BR, etc) set by HUD for their affordable housing programs based on market rents for the area (Sec. 8). FMR's are published annually by HUD.

GROSS INCOME: Household Income as calculated before taxes or deductions is subtracted.

HOUSING AFFORDABILITY: Housing that can be afforded by households that earn the Area Median Income (AMI).

HUD: U.S. Department of Housing and Urban Development; A cabinet agency of the federal government established for the purposes of providing affordable housing and overseeing housing, economic and community development.

INCLUSIONARY ZONING (IZ): Inclusionary zoning requires developers to make a percentage of housing units in new residential developments available to low and moderate.

LOW INCOME HOUSING: Housing targeted for households whose income level is below 80 percent of the area median income (AMI).

MARKET RATE: A rent level that is set without any subsidy or assistance from a public program. Market rate rents are generally comparable to nonsubsidized area rents.

MORATORIUM: a four year period during which certain applications for affordable housing development, as provided in Section 8-30g of the Connecticut General Statutes are not subject to the procedure for appeals to the Superior Court. The First Selectman may request a moratorium from the Connecticut Department of Economic and Community Development (DECD) when the housing equivalency points equal 2%. The units must have been built after 1990, and must not be included in a previous or existing moratorium.

OVERLAY ZONE: a regulatory tool that creates a special zoning district, placed over an existing base zone(s), which identifies special provisions in addition to those in the underlying base zone.

STATE MEDIAN INCOME (SMI): Using HUD guidelines, income at which half the families in the state have higher and half lower. HUD estimates for a family of four.

SUBSIDIZED UNIT: Any unit that receives financial assistance to offer reduced housing costs to low income tenants.

SWRPA: Southwestern Regional Planning Agency: government agency that sets policy and planning agenda for the area concerning development patterns, transportation, economy and environmental quality. Eight municipalities comprise the area: Darien, Greenwich, New Canaan, Norwalk, Stamford, Weston, Westport and Wilton.

TOTAL ESTIMATED DWELLING UNITS: the number of dwelling units in the municipality, based on the most recent United States decennial census published by the United States Census Bureau.

VERY LOW INCOME HOUSING: Housing for households with incomes below 50 percent of area median income (AMI)

WORKFORCE HOUSEHOLD: A household with an annual income which does not exceed eighty percent (80%) or, where required, sixty percent (60%) or one hundred percent (100%), of the State of Connecticut Median income, as adjusted for family size, as published by the United States Census Bureau and periodically updated by the U. S. Department of Housing and Urban Development (HUD). Household eligibility determinations shall be made in accordance with the income criteria in Section 8-30g-8 of the regulations of Connecticut State Agencies.

APPENDIX C CONNECTICUT STATE AGENCIES REGULATIONS

Sec. 8-30g. Affordable housing land use appeals procedure. Definitions. Affordability plan; regulations. Conceptual site plan. Maximum monthly housing cost. Percentage-of-income requirement. Appeals. Modification of application. Commission powers and remedies. Exempt municipalities. Moratorium. Model deed restrictions. (a) As used in this section:

(1) "Affordable housing development" means a proposed housing development which is (A) assisted housing, or (B) a set-aside development;

(2) "Affordable housing application" means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing;

(3) "Assisted housing" means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code;

(4) "Commission" means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority;

(5) "Municipality" means any town, city or borough, whether consolidated or unconsolidated;

(6) "Set-aside development" means a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income;

(7) "Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development; and

(8) "Commissioner" means the Commissioner of Economic and Community Development.

(b) (1) Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following: (A)

Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter; (B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units; (C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units; (D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and (E) draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

(2) The commissioner shall, within available appropriations, adopt regulations pursuant to chapter 54 regarding the affordability plan. Such regulations may include additional criteria for preparing an affordability plan and shall include: (A) A formula for determining rent levels and sale prices, including establishing maximum allowable down payments to be used in the calculation of maximum allowable sales prices; (B) a clarification of the costs that are to be included when calculating maximum allowed rents and sale prices; (C) a clarification as to how family size and bedroom counts are to be equated in establishing maximum rental and sale prices for the affordable units; and (D) a listing of the considerations to be included in the computation of income under this section.

(c) Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply.

(d) For any affordable dwelling unit that is rented as part of a set-aside development, if the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred per cent of the Section 8 fair market rent as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to sixty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred per cent of said Section 8 fair market rent. If the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred twenty per cent of the Section 8 fair market rent, as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to eighty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred twenty per cent of such Section 8 fair market rent.

(e) For any affordable dwelling unit that is rented in order to comply with the requirements of a set-aside development, no person shall impose on a prospective tenant who is receiving governmental rental assistance a maximum percentage-of-income-for-housing requirement that is more restrictive than the requirement, if any, imposed by such governmental assistance program.

(f) Any person whose affordable housing application is denied or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall

be made returnable to the superior court for the judicial district where the real property which is the subject of the application is located. Affordable housing appeals, including pretrial motions, shall be heard by a judge assigned by the Chief Court Administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges, sitting in geographically diverse parts of the state, so that a consistent body of expertise can be developed. Unless otherwise ordered by the Chief Court Administrator, such appeals, including pretrial motions, shall be heard by such assigned judges in the judicial district in which such judge is sitting. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable.

(g) Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses, and (B) the development is not assisted housing, as defined in subsection (a) of this section. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

(h) Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The day of receipt of such a modification shall be determined in the same manner as the day of receipt is determined for an original application. The filing of such a proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. The commission shall hold a public hearing on the proposed modification if it held a public hearing on the original application and may hold a public hearing on the proposed modification if it did not hold a public hearing on the original application. The commission shall render a decision on the proposed modification not later than sixty-five days after the receipt of such proposed modification, provided, if, in connection with a modification submitted under this subsection, the applicant applies for a permit for an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by the commission on such modification under this subsection would lapse prior to the thirty-fifth day after a decision by an inland wetlands and watercourses agency, the time period for decision by the commission on the modification under this subsection shall be extended to thirty-five days after the decision of such agency. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said sixty-five days or subsequent extension period permitted by this subsection shall constitute a rejection of the

proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

(i) Nothing in this section shall be deemed to preclude any right of appeal under the provisions of section 8-8, 8-9, 8-28, 8-30 or 8-30a.

(j) A commission or its designated authority shall have, with respect to compliance of an affordable housing development with the provisions of this chapter, the same powers and remedies provided to commissions by section 8-12.

(k) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a municipality in which at least ten per cent of all dwelling units in the municipality are (1) assisted housing, or (2) currently financed by Connecticut Housing Finance Authority mortgages, or (3) subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, or (4) mobile manufactured homes located in mobile manufactured home parks or legally-approved accessory apartments, which homes or apartments are subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which, for a period of not less than ten years, persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income. The Commissioner of Economic and Community Development shall, pursuant to regulations adopted under the provisions of chapter 54, promulgate a list of municipalities which satisfy the criteria contained in this subsection and shall update such list not less than annually. For the purpose of determining the percentage required by this subsection, the commissioner shall use as the denominator the number of dwelling units in the municipality, as reported in the most recent United States decennial census. As used in this subsection, "accessory apartment" means a separate living unit that (A) is attached to the main living unit of a house, which house has the external appearance of a single-family residence, (B) has a full kitchen, (C) has a square footage that is not more than thirty per cent of the total square footage of the house, (D) has an internal doorway connecting to the main living unit of the house, (E) is not billed separately from such main living unit for utilities, and (F) complies with the building code and health and safety regulations.

(l) (1) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be applicable to an affordable housing application filed with a commission during a moratorium, which shall be the four-year period after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal, or (B) after notice of a provisional approval is published pursuant to subdivision (4) of this subsection. Any moratorium that is in effect on October 1, 2002, is extended by one year.

(2) Notwithstanding the provisions of this subsection, such moratorium shall not apply to (A) affordable housing applications for assisted housing in which ninety-five per cent of the dwelling units are restricted to persons and families whose income is less than or equal to sixty per cent of median income, (B) other affordable housing applications for assisted housing containing forty or fewer dwelling units, or (C) affordable housing applications which were filed with a commission pursuant to this section prior to the date upon which the moratorium takes effect.

(3) Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.

(4) (A) The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or seventy-five housing unit-equivalent points.

(B) A municipality may apply for a certificate of affordable housing project completion pursuant to this subsection by applying in writing to the commissioner, and including documentation showing that the municipality has accumulated the required number of points within the applicable time period. Such documentation shall include the location of each dwelling unit being counted, the number of points each dwelling unit has been assigned, and the reason, pursuant to this subsection, for assigning such points to such dwelling unit. Upon receipt of such application, the commissioner shall promptly cause a notice of the filing of the application to be published in the Connecticut Law Journal, stating that public comment on such application shall be accepted by the commissioner for a period of thirty days after the publication of such notice. Not later than ninety days after the receipt of such application, the commissioner shall either approve or reject such application. Such approval or rejection shall be accompanied by a written statement of the reasons for approval or rejection, pursuant to the provisions of this subsection. If the application is approved, the commissioner shall promptly cause a certificate of affordable housing project completion to be published in the Connecticut Law Journal. If the commissioner fails to either approve or reject the application within such ninety-day period, such application shall be deemed provisionally approved, and the municipality may cause notice of such provisional approval to be published in a conspicuous manner in a daily newspaper having general circulation in the municipality, in which case, such moratorium shall take effect upon such publication. The municipality shall send a copy of such notice to the commissioner. Such provisional approval shall remain in effect unless the commissioner subsequently acts upon and rejects the application, in which case the moratorium shall terminate upon notice to the municipality by the commissioner.

(5) For purposes of this subsection, "elderly units" are dwelling units whose occupancy is restricted by age and "family units" are dwelling units whose occupancy is not restricted by age.

(6) For purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (A) No points shall be awarded for a unit unless its occupancy is restricted to persons and families whose income is equal to or less than eighty per cent of median income, except that unrestricted units in a set-aside development shall be awarded one-fourth point each. (B) Family units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one point if an ownership unit and one and one-

half points if a rental unit. (C) Family units restricted to persons and families whose income is equal to or less than sixty per cent of median income shall be awarded one and one-half points if an ownership unit and two points if a rental unit. (D) Family units restricted to persons and families whose income is equal to or less than forty per cent of median income shall be awarded two points if an ownership unit and two and one-half points if a rental unit. (E) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one-half point. (F) A set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two per cent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995.

(7) Points shall be awarded only for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty per cent of median income.

(8) Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.

(9) A newly-constructed unit shall be counted toward a moratorium when it receives a certificate of occupancy. A newly-restricted unit shall be counted toward a moratorium when its deed restriction takes effect.

(10) The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after a three-year moratorium expires, except (A) as otherwise provided in subsection (k) of this section, or (B) when sufficient unit-equivalent points have been created within the municipality during one moratorium to qualify for a subsequent moratorium.

(11) The commissioner shall, within available appropriations, adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection. Such regulations shall specify the procedure to be followed by a municipality to obtain a moratorium, and shall include the manner in which a municipality is to document the units to be counted toward a moratorium. A municipality may apply for a moratorium in accordance with the provisions of this subsection prior to, as well as after, such regulations are adopted.

(m) The commissioner shall, pursuant to regulations adopted in accordance with the provisions of chapter 54, promulgate model deed restrictions which satisfy the requirements of this section. A municipality may waive any fee which would otherwise be required for the filing of any long-term affordability deed restriction on the land records.

Sec. 8-30g-8. Maximum housing payment calculations in set-aside developments

(a) The maximum price for any affordable unit that is sold or resold within a setaside development, for the period of affordability restrictions, to a household earning eighty percent of the median income or less, shall be determined as follows:

- (1) Step 1. Determine area median income and the statewide median as published by the U.S. Department of Housing and Urban Development for the subject municipality, and use the lesser of these figures.
- (2) Step 2. Adjust median income identified in Step 1 by family size by assuming that 1.5 persons will occupy each bedroom of an affordable unit, except in the case of a studio or zero-bedroom unit, in which case 1.0 person shall be assumed. Family size adjustment shall be made with reference to the following percentages:

NUMBER OF PERSONS IN FAMILY

1	2	3	4	5	6	7	8
70%	80%	90%	100%	108%	116%	124%	132%

PERCENTAGE

ADJUSTMENT (BASE)

The family size adjustment that involves a half person (such as 4.5 persons) shall be calculated by taking the midpoint between the relevant figures above and below the half. For example, the adjustment for a 4.5 person household is 104 percent.

- (3) Step 3. Calculate eighty percent (80%) of Step 2.
- (4) Step 4. Calculate thirty percent (30%) of Step 3, representing that portion of household income deemed to be used for housing costs.
- (5) Step 5. Divide step 4 by twelve (12) months to determine the maximum monthly housing payment.
- (6) Step 6. Determine by reasonable estimate monthly housing expenses, including real property taxes; real property insurance; any common interest ownership or similar fee required of all unit purchasers or owners; and heat and utility costs, excluding television, telecommunications, and information technology services.
- (7) Step 7. Subtract Step 6 from Step 5 to determine the amount available for mortgage principal and interest.
- (8) Step 8. Using the amount resulting from Step 7, apply a mortgage term and interest rate that is commercially reasonable and available to households likely to apply to purchase such units, in order to determine the financeable amount.
- (9) Step 9. Calculate down payment, which shall comply with subsection (c) of this section.
- (10) Step 10. Add Steps 8 and 9 to determine the maximum sale or resale price.

(b) For a unit required to be sold or resold to a household earning sixty percent (60%) or less of the median income, the formula stated above shall be used, except that in Step 3, sixty percent (60%) shall be used instead of eighty percent (80%).

(c) The maximum allowable down payment used in calculating the maximum sale or resale price of an affordable unit that is sold shall be the lesser of twenty percent (20%) of the total sale price or twenty percent (20%) of the Connecticut Housing Finance Authority (CHFA) maximum sales price limit for a comparably-sized unit in the area, as published by CHFA.

(d) The maximum monthly payment for a rental unit in a set-aside development, for the period of affordability restrictions, for a household earning eighty percent of the median income or less, shall be determined as follows:

(1) Step 1. Determine area median income and the statewide median as published by the U.S.

Department of Housing and Urban Development for the subject municipality, and use the lesser of these figures.

(2) Step 2. Adjust median income identified in Step 1 by family size by assuming that 1.5 persons will occupy each bedroom of an affordable unit, except in the case of a studio or zero-bedroom unit, in which case 1.0 person shall be assumed. Family size adjustment shall be made with reference to the following percentages:

NUMBER OF PERSONS IN FAMILY

	1	2	3	4	5	6	7	8
PERCENTAGE	70%	80%	90%	100%	108%	116%	124%	132%
ADJUSTMENT (BASE)								

The family size adjustment that involves a half person (such as 4.5 persons) shall be calculated by taking the midpoint between the relevant figures above and below the half. For example, the adjustment for a 4.5 person household is 104 percent.

(3) Step 3. Calculate eighty percent (80%) of Step 2.

(4) Step 4. Calculate thirty percent (30%) of Step 3, representing that portion of household income deemed to be used for housing costs.

(5) Step 5. Divide Step 4 by twelve (12) months to determine the maximum monthly housing payment.

(6) Step 6. Determine the fair market rent for a unit with the same number of bedrooms in the subject municipality as published by the U.S. Department of Housing and Urban Development.

(7) Step 7. Multiply the U.S. Department of Housing and Urban Development fair market rent as determined in Step 6 by one hundred twenty percent (120%).

(8) Step 8. The maximum monthly housing payment for occupants of the subject rental unit shall be the lesser of the calculations in Steps 5 and 7.

(9) Step 9. Determine by reasonable estimate monthly expenses for heat and utility costs for which the tenant is directly responsible, excluding television, telecommunications, and information technology services, but including any other periodic fees for which the tenant is directly responsible, such as common charges in the case of a common interest ownership community.

(10) Step 10. Deduct the estimate of tenant-paid utilities and fees determined in Step 9 from the maximum monthly housing payment in Step 8, which will result in the maximum amount that the developer/owner may charge for this rental unit as the monthly contract rent.

(e) For a unit required to be rented to a household earning sixty percent (60%) or less of the median income, the formula stated above shall be used, except that in Step 3, sixty percent (60%) shall be used instead of eighty percent (80%), and in Step 7, the U.S. Department of Housing and Urban Development fair market rent shall be used instead of one hundred twenty percent (120%) of the U.S. Department of Housing and Urban Development fair market rent.

(f) The elements of annual household income, and documentation of such income, used for the purposes of determining whether a household's annual income qualifies it for occupancy of a price-restricted unit, shall be conducted using the guidelines published by the U.S. Department of

Housing 24 CFR 5.609. New section published in Conn. Law Journal June 11, 2002, effective April 29, 2002; amendment published in Conn. Law Journal June 7, 2005, effective May 3, 2005.

APPENDIX D
HOMECONNECTICUT LEGISLATION

June Special Session, Public Act No. 07-4

***AN ACT IMPLEMENTING THE PROVISIONS OF THE BUDGET CONCERNING
GENERAL GOVERNMENT.***

Sec. 38. (NEW) (*Effective July 1, 2007*) As used in this section and sections 39 to 49, inclusive, of this act:

(1) "Approved incentive housing zone" means an overlay zone that has been adopted by a zoning commission and for which a letter of final eligibility has been issued by the secretary under section 42 of this act.

(2) "Building permit payment" means the one-time payment, made pursuant to section 44 of this act, for each qualified housing unit located within an incentive housing development for which a building permit has been issued by the municipality.

(3) "Developable land" means the area within the boundaries of an approved incentive housing zone that feasibly can be developed into residential or mixed uses consistent with the provisions of sections 38 to 49, inclusive, of this act, not including: (A) Land already committed to a public use or purpose, whether publicly or privately owned; (B) existing parks, recreation areas and open space that is dedicated to the public or subject to a recorded conservation easement; (C) land otherwise subject to an enforceable restriction on or prohibition of development; (D) wetlands or watercourses as defined in chapter 440 of the general statutes; and (E) areas exceeding one-half or more acres of contiguous land that are unsuitable for development due to topographic features, such as steep slopes.

(4) "Duplex" means a residential building containing two units.

(5) "Eligible location" means: (A) An area near a transit station, including rapid transit, commuter rail, bus terminal, or ferry terminal; (B) an area of concentrated development such as a commercial center, existing residential or commercial district, or village district established pursuant to section 8-2j of the general statutes; or (C) an area that, because of existing, planned or proposed infrastructure, transportation access or underutilized facilities or location, is suitable for development as an incentive housing zone.

(6) "Historic district" means an historic district established pursuant to chapter 97a of the general statutes.

(7) "Incentive housing development" means a residential or mixed-use development (A) that is proposed or located within an approved incentive housing zone; (B) that is eligible for financial incentive payments set forth in sections 38 to 49, inclusive, of this act; and (C) in which not less than twenty per cent of the dwelling units will be conveyed subject to an incentive housing restriction requiring that, for at least thirty years after the initial occupancy of the development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing

for which persons pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent or less of the median income.

(8) "Incentive housing restriction" means a deed restriction, covenant, zoning regulation, site plan approval condition, subdivision approval condition, or affordability plan constituting an obligation with respect to the restrictions on household income, sale or resale price, rent and housing costs required by sections 38 to 49, inclusive, of this act, enforceable for thirty years as required by said sections, and recorded on the land records of the municipality where the housing is located.

(9) "Incentive housing zone" means a zone adopted by a zoning commission pursuant to sections 38 to 49, inclusive, of this act, as an overlay to one or more existing zones, in an eligible location.

(10) "Incentive housing zone certificate of compliance" means a written certificate issued by the secretary in accordance with sections 38 to 49, inclusive, of this act.

(11) "Letter of eligibility" means a preliminary or final letter issued to a municipality by the secretary pursuant to section 42 of this act.

(12) "Median income" means, after adjustments for household size, the area median income as determined by the United States Department of Housing and Urban Development for the municipality in which an approved incentive housing zone or development is located.

(13) "Mixed-use development" means a development containing one or more multifamily or single-family dwelling units and one or more commercial, public, institutional, retail, office or industrial uses.

(14) "Multifamily housing" means a building that contains or will contain three or more residential dwelling units.

(15) "Open space" means land or a permanent interest in land that is used for or satisfies one or more of the criteria listed in subsection (b) of section 7-131d of the general statutes.

(16) "Secretary" means the Secretary of the Office of Policy and Management or the designee of the secretary.

(17) "Townhouse housing" means a residential building consisting of a single-family dwelling unit constructed in a group of three or more attached units, in which each unit extends from foundation to roof and has open space on at least two sides.

(18) "Zone adoption payment" means a one-time payment, made pursuant to section 44 of this act.

(19) "Zoning commission" means a municipal agency designated or authorized to exercise zoning powers under chapter 124 of the general statutes or a special act, and includes an agency that exercises both planning and zoning authority.

Sec. 39. (NEW) (*Effective July 1, 2007*) (a) Notwithstanding the provisions of a charter or special act, a zoning commission may adopt, as part of the zoning regulations adopted under section 8-2 of

the general statutes or any special act, regulations establishing an incentive housing zone in accordance with the provisions of sections 38 to 49, inclusive, of this act.

(b) An incentive housing zone shall satisfy the following requirements:

(1) The zone shall be consistent with the state plan of conservation and development and be located in an eligible location.

(2) The regulations of the zone shall permit, as of right, incentive housing development.

(3) The minimum allowable density for incentive housing development, per acre of developable land, shall be: (A) Six units per acre for single-family detached housing; (B) ten units per acre for duplex or townhouse housing; and (C) twenty units per acre for multifamily housing, provided that a municipality whose population as determined by the most recent federal decennial census is less than five thousand, when applying to the secretary for a letter of eligibility under section 42 of this act, may request approval of minimum as of right densities of not less than four units per acre for single-family detached housing, not less than six units per acre for duplex or townhouse housing, and not less than ten units per acre for multifamily housing. In making such request, the municipality shall provide the Secretary of the Office of Policy and Management with evidence of sewage disposal, water supply, traffic safety or other existing, substantial infrastructure limitations that prevent adoption of the minimum densities set forth in this subdivision. If the proposed incentive housing zone otherwise satisfies the requirements of this section, the secretary may issue the requested letter of eligibility. A municipality may request a waiver of the density requirements of this subdivision and the secretary may grant a waiver if the municipality demonstrates in the application that the land to be zoned for incentive housing development is owned or controlled by the municipality itself, an agency thereof, or a land trust, housing trust fund or a nonprofit housing agency or corporation. The proposed incentive housing zone regulation shall require, in an enforceable manner, that one hundred per cent of the proposed residential units will be subject to an incentive housing restriction, and the proposed incentive housing zone will otherwise satisfy the requirements of this section.

(4) In order to qualify for financial incentive payments set forth in section 44 of this act, the regulations of an incentive housing zone concerning the minimum as of right densities set forth in subdivision (3) of this subsection shall constitute an increase of at least twenty-five per cent above the density allowed by the underlying zone, notwithstanding the provisions of said section 44 with regard to zone adoption and building permit payments.

(5) The minimum densities prescribed in subdivision (3) of this subsection shall be subject only to site plan or subdivision procedures, submission requirements and approval standards of the municipality, and shall not be subject to special permit or special exception procedures, requirements or standards.

(6) An incentive housing zone may consist of one or more subzones, provided each subzone and the zone as a whole comply with the requirements of sections 38 to 49, inclusive, of this act.

(7) The land area of an incentive housing zone shall not exceed ten per cent of the total land area in the municipality. The aggregate land area of all incentive housing zones and subzones in a municipality shall not exceed twenty-five per cent of the total land area in the municipality.

(c) A zoning commission may modify, waive or delete dimensional standards contained in the zone or zones that underlie an incentive housing zone in order to support the minimum or desired densities, mix of uses or physical compatibility in the incentive housing zone. Standards subject to modification, waiver or deletion include, but shall not be limited to, building height, setbacks, lot coverage, parking ratios and road design standards.

(d) If a zoning commission adopts a regulation for an incentive housing zone that permits single-family detached homes on subdivided lots, requiring subdivision approval under the subdivision regulations of the municipality, the zoning commission shall make a written finding that the applicability of such subdivision regulations will not unreasonably impair the economic or physical feasibility of constructing housing at the minimum densities and subject to an incentive housing restriction as required in sections 38 to 49, inclusive, of this act. If housing on subdivided lots is proposed in an incentive housing zone, the zoning commission shall use its best efforts to adopt or encourage the planning commission to adopt subdivision standards that will ensure consistency of the single-family detached housing with the purposes of sections 38 to 49, inclusive, of this act.

(e) The regulations of an incentive housing zone may allow for a mix of business, commercial or other nonresidential uses within a single zone or for the separation of such uses into one or more subzones, provided that the zone as a whole shall comply with the requirements of sections 38 to 49, inclusive, of this act, and that such uses shall be consistent with as-of-right residential uses and densities required under this section.

(f) An incentive housing zone may overlay all or any part of an existing historic district or districts, and a municipality may establish an historic district within an approved incentive housing zone, provided, if the requirements or regulations of such historic district render the approved housing incentive zone not in compliance with the provisions of sections 38 to 49, inclusive, of this act, the secretary shall deny a preliminary or final letter of eligibility, deny or revoke a certificate of compliance, or deny any financial incentive payments set forth in section 44 of this act.

(g) An applicant for site plan or subdivision approval to construct an incentive housing development within an approved zone may, through an incentive housing restriction, exceed the minimum requirements for such a development as follows: (1) More than twenty per cent of the total proposed dwelling units may be subject to the restriction; (2) the maximum annual income of qualifying households may be less than eighty per cent of the area median income; or (3) the duration of the restriction may be longer than thirty years. An application for approval of an incentive housing development may not be denied on the basis that the proposed incentive housing restriction contains one or more of the provisions set forth in this subsection.

(h) The provisions of this section shall not be construed to affect the power of a zoning commission to adopt or amend regulations under chapter 124 of the general statutes or any special act.

Sec. 40. (NEW) (*Effective July 1, 2007*) (a) A zoning commission, at the time of and as part of its adoption of regulations for an incentive housing zone, may adopt design standards for incentive housing developments within such zone. Such design standards (1) may ensure that construction within the incentive housing zone is complementary to adjacent and neighboring buildings and structures, and consistent with the housing plan provided for in section 41 of this act, and (2) may address the scale and proportions of buildings; site coverage; alignment, width and grade of streets and sidewalks; type and location of infrastructure; location of building and garage entrances; off-

street parking; protection of significant natural site features; location and design of open spaces; signage; and setbacks and buffering from adjacent properties.

(b) A design standard shall not be adopted if such standard will unreasonably impair the economic or physical feasibility of constructing housing at the minimum densities and with the required incentive housing restriction set forth in sections 38 to 49, inclusive, of this act. The Secretary of the Office of Policy and Management shall not approve a request for a letter of preliminary or final eligibility under section 42 of this act if a proposed design standard will violate the provisions of this subsection.

Sec. 41. (NEW) (*Effective July 1, 2007*) On or before June 30, 2017, a municipality may file with the Secretary of the Office of Policy and Management an application for preliminary determination of eligibility for a zone adoption payment pursuant to subsection (a) of section 44 of this act. Such application shall:

- (1) Identify and describe the boundaries of the proposed incentive housing zone or zones;
- (2) Identify, describe and calculate the developable land within the proposed incentive housing zone or zones;
- (3) Identify and describe existing and potential residential development and the potential for reuse of existing or underutilized buildings within the zone or zones;
- (4) Calculate the number of residential units that may be constructed in the zone or zones if the proposed regulations are approved based on developable land and the minimum as-of-right densities set forth in subdivision (3) of subsection (b) of section 39 of this act;
- (5) Include a housing plan that describes the anticipated build-out of the zone or zones, including information on available and proposed infrastructure, compatibility of proposed incentive housing development with existing and proposed buildings and uses, and efforts that the municipality is making or intends to make to support and promote the residential construction permitted by the proposed regulations;
- (6) Include the text of the proposed incentive housing zone regulations and design standards and, if applicable, the text of the subdivision regulations; and
- (7) Include the text of the proposed incentive housing restriction and a plan for administering and enforcing its requirements and limitations.

Sec. 42. (NEW) (*Effective July 1, 2007*) (a) Upon application by a municipality under section 41 of this act, the Secretary of the Office of Policy and Management shall, not later than sixty days after receipt, issue, in writing, a preliminary determination of the eligibility of the municipality for the financial incentive payments set forth in section 44 of this act. At least thirty days before making such preliminary determination, the secretary shall electronically give notice of the application to all persons who have provided the secretary with a current electronic mail address and a written request to receive such notices. If the secretary determines that the application is incomplete or the proposed incentive housing zone is not eligible or does not comply with the provisions of sections 38 to 49, inclusive, of this act, the secretary shall, within the sixty-day response period, notify the

municipality, in writing, of the reasons for such determination. A municipality may thereafter reapply for approval after addressing the reasons for ineligibility. The secretary's failure to issue a written response within sixty days of receipt shall be deemed to be disapproval, after which the municipality may reapply.

(b) After a municipality has received from the secretary a preliminary letter of eligibility, the zoning commission of the municipality may adopt the incentive housing zone regulations and design standards as proposed to the secretary for preliminary approval. Not later than thirty days after receipt from the municipality of a written statement that its zoning commission has adopted the proposed regulations and standards, the secretary shall issue a letter of final approval of the incentive housing zone. The secretary's failure to issue a letter of final approval not more than thirty days after receipt of the written statement shall be deemed disapproval of the zone after which the municipality may reapply for determination of eligibility under this section.

(c) The secretary shall not approve any proposed incentive housing zone for which the proposed regulations or design standards have the intent or effect of discriminating against, making unavailable, denying or impairing the physical or financial feasibility of housing which is receiving or will receive financial assistance under any governmental program for the construction or substantial rehabilitation of low or moderate income housing, or any housing occupied by persons receiving rental assistance under chapter 319uu of the general statutes or Section 1437f of Title 42 of the United States Code.

(d) Any amendment to the regulations or design standards approved by the secretary for preliminary or final eligibility shall be submitted to the secretary for approval as set forth in this section. The secretary shall approve or disapprove such amendment not more than sixty days after receipt of the amendment. If the secretary fails to approve or disapprove such amendment within such period, the amendment shall be deemed to be disapproved. Thereafter, the commission may reapply for approval of the amendment.

Sec. 43. (NEW) (*Effective July 1, 2007*) (a) Each municipality whose zoning commission has received a final determination of eligibility and has adopted an approved incentive housing zone shall annually, in accordance with procedures established by the Secretary of the Office of Policy and Management, apply to the secretary for an incentive housing zone certificate of compliance. To receive a certificate, the municipality shall verify within the time specified by the secretary that:

(1) The zoning commission of the municipality has not amended or repealed any portion of the regulations or design standards in the incentive housing zone without approval of the secretary as required by sections 40 and 42 of this act;

(2) The approval of the incentive housing zone has not been revoked by the secretary;

(3) The municipality is making reasonable efforts to assist and promote approval of incentive housing development and construction of housing within the approved zone or zones; and

(4) The zoning commission has not unreasonably denied any application for site plan or subdivision approval, or other necessary coordinating permits or approvals, and has only denied applications in a manner consistent with the provisions of section 45 of this act.

(b) If the information required pursuant to subsection (a) of this section has been submitted by a municipality in a timely manner, and the secretary makes a determination that the municipality has met the requirements of sections 38 to 49, inclusive, of this act, the secretary shall issue compliance certificates by October first annually. If the secretary determines that the municipality is in material noncompliance with the requirements of sections 38 to 49, inclusive, of this act, the secretary, after notice and hearing pursuant to chapter 54 of the general statutes, may revoke certification. Any revocation of certification, or other sanctions imposed by the secretary under section 47 of this act, shall not affect the validity of the incentive housing zone regulations or the application of such regulations to a pending or approved development application within the incentive housing zone, but shall render the municipality ineligible for financial incentive payments set forth in section 44 of this act.

Sec. 44. (NEW) (*Effective July 1, 2007*) (a) Upon the determination that (1) the housing incentive zone has been adopted; (2) the time for appeal of the final adoption of the regulations has expired or a final and unappealable judgment upholding such regulations has been issued in any civil action challenging or delaying such regulations; and (3) the municipality has otherwise complied with the requirements of sections 38 to 49, inclusive, of this act, the Secretary of the Office of Policy and Management shall, subject to the availability of funds, make a zone adoption payment to the municipality in the amount of two thousand dollars for each unit of housing that can, as-of-right, be built as part of an incentive housing development within such zone or zones based on the definition of developable land and the minimum as-of-right densities set forth in subdivision (3) of subsection (b) of section 39 of this act.

(b) Subject to the availability of funds secretary shall issue to the municipality a one-time building permit payment for each building permit for a residential housing unit in an approved incentive housing development upon submission by a municipality to the secretary of proof of issuance of such building permit and after determining that (1) no appeal from or challenge to such building permit has been filed or is pending, and (2) such building permit was issued for housing in an incentive housing development not later than five years after the date of the final adoption of incentive housing zone regulations by the zoning commission in accordance with the provisions of subsection (b) of section 42 of this act. The amount of payment shall be two thousand dollars for each multifamily housing unit, duplex unit or townhouse unit and five thousand dollars for each single-family detached unit. Such payment shall be made by the secretary not more than sixty days after receipt of proof of the issuance of building permits and verification of the absence of any appeal or challenge.

(c) Residential units that are located within an approved incentive housing zone that are part of a development that constitutes housing for older persons permitted by the federal Fair Housing Act, 42 USC 3607 or sections 46a-64c and 46a-64d of the general statutes, shall not be eligible for payments under this section.

Sec. 45. (NEW) (*Effective July 1, 2007*) (a) A zoning commission shall prescribe, consistent with the provisions of sections 38 to 49 inclusive, of this act, the form of an application for approval of an incentive housing development. The time for and procedures for receipt and processing of applications shall be as provided in chapters 124 and 126 of the general statutes, as applicable. A zoning commission or its agent may, to the extent allowed by the Freedom of Information Act, conduct one or more preliminary or preapplication planning or workshop meetings with regard to an incentive housing zone or development. A zoning commission shall conduct a public hearing in

connection with an application for site plan or subdivision approval of an incentive housing development.

(b) The regulations of an incentive housing zone may require the applicant for approval of an incentive housing development to pay the cost of reasonable consulting fees for peer review of the technical aspects of the application for the benefit of the zoning commission. Such fees shall be accounted for separately by the municipality from other moneys and used only for expenses associated with the technical review of the application by consultants who are not otherwise salaried employees of the municipality or the zoning commission. Any amount in the account remaining after payment of all expenses for technical review, including any interest accrued, shall be returned to the applicant not later than forty-five days after the completion of the technical review.

(c) The regulations of the incentive housing zone may provide for the referral of a site plan or subdivision application to other agencies, boards or commissions of the municipality for comment. If a site plan or subdivision application is referred to another agency, board or commission, such agency, board or commission shall provide any comments within the time period contained in section 8-7d of the general statutes, that is applicable to such application. The provisions of this section shall not be construed to affect any other referral required by the general statutes.

(d) An incentive housing development shall be approved by the zoning commission subject only to conditions that are necessary to (1) ensure substantial compliance of the proposed development with the requirements of the incentive housing zone regulations, design standards and, if applicable, subdivision regulations; or (2) mitigate any extraordinary adverse impacts of the development on nearby properties. An application may be denied only on the grounds: (A) The development does not meet the requirements set forth in the incentive housing zone regulations; (B) the applicant failed to submit information and fees required by the regulations and necessary for an adequate and timely review of the design of the development or potential development impacts; or (C) it is not possible to adequately mitigate significant adverse project impacts on nearby properties by means of conditions acceptable to the applicant.

(e) The duration and renewal of an approval of an incentive housing development shall be governed by subsection (i) of section 8-3, subsection (j) of section 8-3, section 8-26c or section 8-26g of the general statutes, as applicable. The time to complete the work approved shall be extended (1) by the time required to adjudicate to final judgment any appeal from a decision of the commission on an incentive housing development site plan or subdivision plan or any required coordinate permit; (2) by the zoning commission if the applicant is actively pursuing other permits needed for the development; (3) if there is other good cause for the failure to complete such work; or (4) as provided in an approval for a multiphase development.

(f) An applicant for approval of an incentive housing development within an approved incentive housing zone may not make such an application utilizing the provisions of section 8-30g of the general statutes.

(g) Approval of or amendment to regulations or design standards for an incentive housing zone or subzone, or site plan or subdivision approval of an incentive housing development, may be appealed to the Superior Court pursuant to the provisions of section 8-8 or 8-28 of the general statutes.

Sec. 46. (NEW) (*Effective July 1, 2007*) (a) The Secretary of the Office of Policy and Management shall be responsible for the administration, review and reporting on the incentive housing zone program as provided in sections 38 to 49, inclusive, of this act.

(b) On or before January 1, 2009, and annually thereafter, the secretary shall submit an annual report on the program to the Governor and the General Assembly in accordance with section 11-4a of the general statutes. Each municipality shall submit to the secretary any data requested by the secretary on the incentive housing program. The report shall be based on such data and shall be for the period ending the last day of the prior fiscal year. The report shall (1) identify and describe the status of municipalities actively seeking letters of eligibility; (2) identify approved incentive housing zones and the amounts and anticipated schedule of zone adoption and building permit payments under section 44 of this act during the prior and current fiscal year; (3) summarize the amount of land area zoned for particular types of development in both proposed and approved zones and the number of developments being reviewed by zoning commissions under section 45 of this act, including the number and type of proposed residential units, the number of building permits issued, the number of completed housing units and their type; (4) state the amount of zone adoption and building permit payments made to each municipality; and (5) for the current and immediately succeeding fiscal years, estimate (A) the anticipated number and size of proposed new incentive housing zones over such time period; (B) the number and size of new incentive housing zones that may be approved over such time period; (C) the potential number of residential units to be allowed in such new and proposed incentive housing zones; and (D) anticipated construction of housing over such time period.

Sec. 47. (NEW) (*Effective July 1, 2007*) (a) The Secretary of the Office of Policy and Management may require the municipality to repay to the state all or part of the payments or reimbursements made to a municipality under sections 38 to 49, inclusive, of this act upon determination by the secretary that the municipality has (1) amended or repealed the designation of an incentive housing zone without the approval of the secretary; or (2) acted to discourage incentive housing development or to impose arbitrary or unreasonable standards, requirements, delays or barriers to the construction of housing following approval of an incentive housing zone.

(b) The secretary may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 48. (NEW) (*Effective July 1, 2007*) Within available appropriations, the Secretary of the Office of Policy and Management may make grants to municipalities for the purpose of providing technical assistance in the planning of incentive housing zones, the adoption of incentive housing zone regulations and design standards, the review and revision as needed of applicable subdivision regulations and applications to the secretary for preliminary or final approval as set forth in sections 38 to 49, inclusive, of this act. The secretary may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 49. (NEW) (*Effective July 1, 2007*) Within available appropriations, the Commissioner of Economic and Community Development, in consultation with the Secretary of the Office of Policy and Management, may make grants to nonprofit housing assistance or nonprofit housing development organizations in order to support technical assistance planning, predevelopment, development, construction and management of housing developments. The commissioner may

adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 50. Subsection (c) of section 4b-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(c) If the secretary determines that such land, improvement, interest or part thereof may properly be treated as surplus, he shall notify the Commissioner of Public Works. If the secretary also determines that such land, improvement or interest or part thereof was purchased or improved with proceeds of tax exempt obligations issued or to be issued by the state, he shall also notify the Treasurer. The Commissioner of Public Works may sell, exchange or lease, or enter into agreements concerning, such land, improvement, interest or part thereof, after (1) notifying (A) the municipality or municipalities in which such land, improvement or interest is located, and (B) the members of the General Assembly representing such municipality or municipalities, and (C) any potential developer of an incentive housing development, as defined in section 38 of this act, who has registered with the Commissioner of Economic and Community Development to be notified of any such state surplus land, and (2) obtaining the approval of (A) the Secretary of the Office of Policy and Management, (B) the State Properties Review Board, and (C) the joint standing committees of the General Assembly having cognizance of matters relating to (i) state revenue, and (ii) the purchase and sale of state property and facilities, and (3) if such land, improvement, interest or part thereof was purchased or improved with proceeds of tax-exempt obligations issued or to be issued by the state, obtaining the approval of the Treasurer. The Treasurer may disapprove such a transaction only if the transaction would affect the tax-exempt status of such obligations and could not be modified to maintain such tax-exempt status. If a proposed agreement for such a conveyance has not been submitted to the State Properties Review Board within three years after the Commissioner of Public Works provides such notice to such municipality and such members of the General Assembly, or if the board does not approve the proposed agreement within five years after such notice, the Commissioner of Public Works may not convey such land, improvement or interest without again so notifying such municipality and such members of the General Assembly. In the case of a proposed lease of land, an improvement to land or an interest in land, or any part thereof, with a person, firm or corporation in the private sector, for a term of six months or more, the Commissioner of Public Works shall comply with such notice requirement by notifying in writing the chief executive officer of the municipality in which the land, improvement or interest is located and the members of the General Assembly representing such municipality, not less than two weeks before seeking the approval of said secretary, board and committees, concerning the proposed lease and the manner in which the lessee proposes to use the land, improvement or interest. Each agency, department or institution which informs the secretary that any land, improvement or interest in land is not needed shall retain responsibility for its security and maintenance until the Commissioner of Public Works receives custody and control of the property, if any. The Treasurer shall execute and deliver any deed or instrument necessary to convey the title to any property the sale or exchange of which or a contract for the sale or exchange of which is authorized by this section.

APPENDIX E

MORATORIUM QUESTIONS & ANSWERS

Since the DAHAC report came out in 2007, a number of questions have also arisen regarding the possibility of a moratorium under Section 8-30g. The Darien Planning and Zoning Office has had numerous conversations with representatives of DECD and others to follow-up on the work done by DAHAC regarding the moratorium issue in Section 8 of their 2007 report.

1) The redevelopment of Allen O'Neill will most likely result in a greater number of units than currently exists. Regardless of how many units are ultimately built, will all units in the development count toward moratorium points or only those units in excess of the number that currently exists?

The DECD response was that only those units in excess of the number that currently exist will count toward moratorium points.

2) Will the required number of points needed for a moratorium change in 2010?

Yes. When the 2010 US Census numbers come out. Thus, the Town needs to get the 23.84 points prior to that time, which we estimate to be the middle of 2012. If not, the required number of points will increase because additional housing units have been built in Darien between 2000 and 2010. Thus, the amount of required points for a moratorium will likely increase sometime in 2012.

3) Why have the AvalonBay Communities market-rate units not been considered in the DAHAC count?

AvalonBay Communities market-rate units were built in early 2000. There has been State-wide discussion as to this timeframe regarding set-aside developments that occurred between 1989 and 2002. The Town should follow up with the State to seek points for these units. It may require an amendment to Section 8-30g.

4) Is it possible to have some existing housing with special permit uses, such as churches and country clubs, should they be deed restricted, count towards the moratorium?

Possibly. There is nothing currently in the Statutes to disallow this. Recently, Town Planning and Zoning Department employees spoke with an attorney familiar with the Statutes who said that it would have to be a deed restriction filed in the Land Records for a specific period of time, and income verification would be necessary, and the units would need to be managed by an agency to ascertain the income qualifications annually.

5) Affordable Housing vs. Moratorium Points:

*It needs to be clarified that in order to qualify for a moratorium, 8-30g states that the State Median Income (SMI) or the Area Median Income (AMI), **whichever is the lesser of the two**, must be used. Therefore, for Darien, only the State Median Income can be used in the moratorium calculations.*

*In order to meet the 10% State affordability requirements, points are not counted. Instead, units of housing that is affordable at 80% of the SMI **or** the AMI are allowable, as well as CHFA and assisted housing.*